

(6)
No. 88-97

Supreme Court, U.S.

FILED

NOV 17 1988

JOSEPH E. SPANIOLO, JR.

CLERK

In The
Supreme Court of the United States
October Term, 1988

— o —
FORD MOTOR COMPANY,

Petitioner,

v.

GARY BRYANT,

Respondent.

— o —
On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

— o —
JOINT APPENDIX

— o —
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Petition for Certiorari filed July 14, 1988
Certiorari granted October 3, 1988

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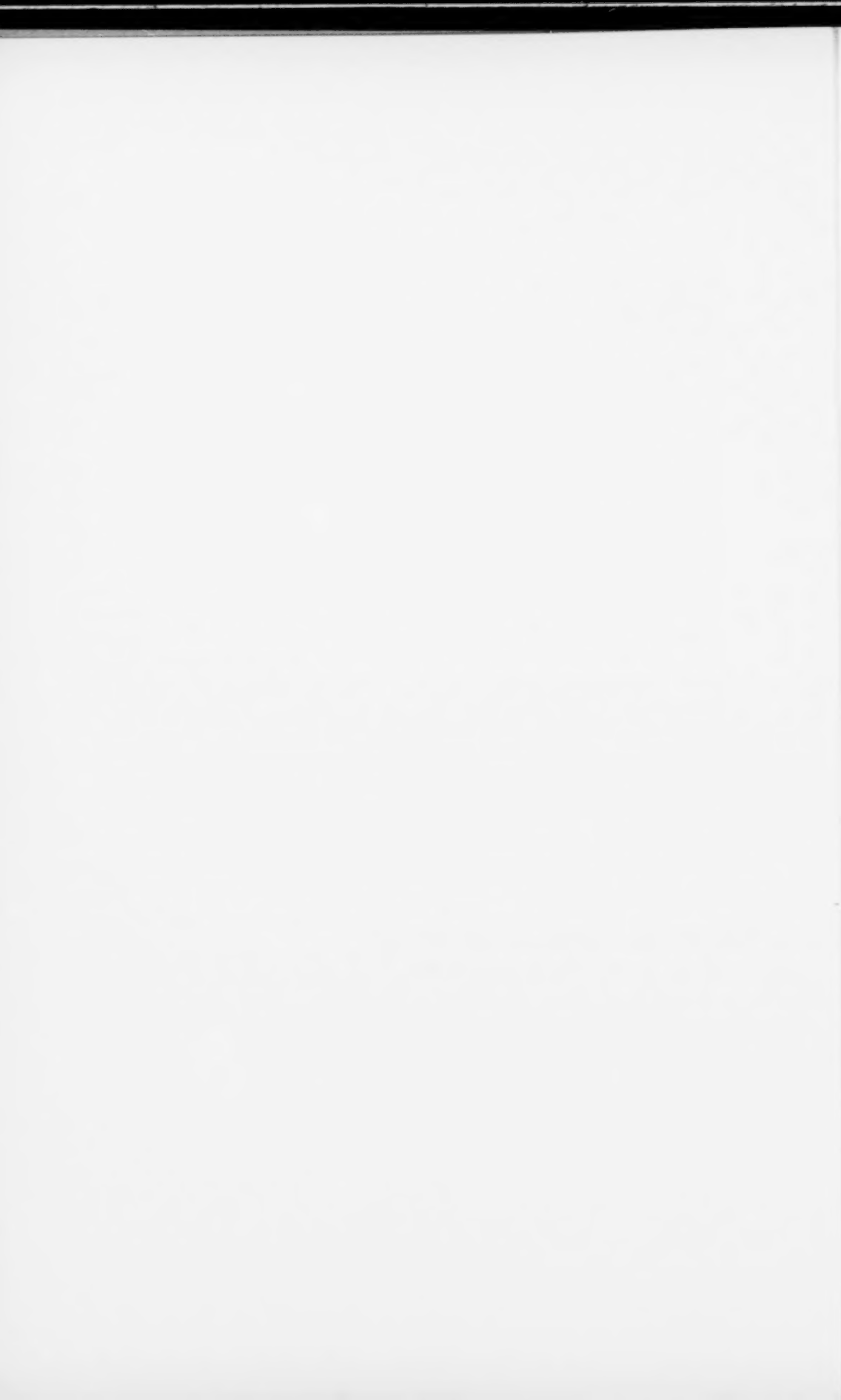
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The following opinion, judgment, and statutes have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Docket Entries as filed in the United States Court Central
District of California

CV84-2049 PAR(MCX) *Gary Bryant vs. Ford Motor Co.*

<u>DATE</u>	<u>PROCEEDINGS</u>
1/24/84	Summons and Complaint for Damages (Personal Injuries) filed in Superior Court of the State of California for the County of Los Angeles Case No. C483981
3/29/84	PETN FOR REMOVAL frm Sup Crt. Co of LA Case #C483981, w/epy sms & complt.
4/ 3/84	ANSWER to COMPLAINT deft Ford Motor Co.
7/ 9/84	Note of mot for S/J & Summary adjudicatn of Issues, 8/20/84, 10 a.m. Deft LODGED prop statmnt of uncontrvted facts/ conclus of law. Memo of P's/A's in suppt of mot for S/J & for Summry adjudicatn of issues, 8/20/84, 10 a.m. Deft. Appendix of exhbts in suppt of mot for S/J & for adjudictn of issues, 8/20/84, 10 a.m. Deft.
8/ 7/84	Stmnt of genuine issues Pltf
8/10/84	Pltf oppostn to mot for S/J; memo of P's/A's; declr of Timothy J. Wheeler, 8/20/84, 10 a.m. Pltf.
8/15/84	Reply memo of Ford Motor Co, in suppt of mot for S/J, & Summary adjudictn of Issues, Deft.
8/17/84	Note of taking depo (records only, no apprnce) of custodian of reerds of City Ford., 9/12/84, 10 a.m. Pltf.

<u>DATE</u>	<u>PROCEEDINGS</u>
8/20/84	MO [Minute Order]: Defts mot for S/J & summary adjudictn of issues is GRANTED re
8/23/84	Fld Judgmnt & ORD that pltfs negligenc claim as alleged in first cause of actn in complnt sh be dismiss as mat of law. pltfs beach of warranty claim as alleged in second cause of actn in complnt sh be dismiss as a mat of law. pltfs strict liability claim as alleged in third cause of actn in complnt sh be dismiss as mat of law. Ford is entitled to summary adjudictn of issues & disml of 1st, 2nd & 3rd causes of actn. disml of these causes of actn sh be entered (ENT 8/27/84 Mld cpy. Mldnote ptys. M D JS-6.
8/29/84	Ntc of mot to join additional deft parties, for lv to file 1st A/C or to remand actn to proper State Crt; memo of P/A; declr of Timothy J. Wheeler, 9/24/84, 10 a.m. Pltf.
9/26/84	Fld Pltf's NOTC OF APPEAL to the 9th Cir C/A frm ord ent on 8/27/84. Ntc of mot to remand to Superior Crt; memo of PA; declr of Timothy J. Wheeler, 9/24/84, 10 a.m. Pltf.
9/28/84	MO [Minute Order]: Jurmnt entred for sole deft in case. 9/29/84, pltf filed mot to remand to State Crt, Crt has no jurisdiet over actn, no actn will be taken by Crt on the instant mot. Note of mot for relief from Judgmnt of ORD or in alternative a mot for reconsideration, 10/29/84, 10 a.m. Pltf.
11/16/84	Lodged ord frm the 9th cir C/A re: 11/2/84 pre-briefing conference
11/21/84	Ord: Accordingly, Pltfs mot to reconsider & mot to set aside judgment are DENIED.

<u>DATE</u>	<u>PROCEEDINGS</u>
1/10/85	REPORTERS TRANS OF PROCEEDINGS taken on 8/20/84.
1/11/85	Supplmntal declrtn of Timothy J. Wheeler. Pltf.
1/22/85	Mot to reconsider is Denied. MO [Minute Or- der]
2/ 8/85	Pltfs mot to reconsider, Crt finds Pltfs mot Denied.
2/12/85	Reporters trans of Proceedings taken on 12/20/85
3/ 1/85	Fld Pltf's Note of Appeal to the Ninth Circ from the ORD dated 2/8/85; fee paid, forms given.
Docket Entries as filed in the United States Court of Ap- peals for the Ninth Circuit.	
1/11/85	Notice of mot & Mot for Limited remand
1/22/85	Opposition of Ford to Mot for Limited remand & mot to vacate; decl. of Richard A. Goette
1/22/85	Order, lodged 1/25/85 in Dist. Ct.
1/25/85	Supplemental decl. of Richard A. Goette

SUMMONS
(CITACION JUDICIAL)

For Court Use Only
(Solo Para Uso De La Corte)

NOTICE TO DEFENDANT: (Aviso a Acusado)
FORD MOTOR COMPANY, a corporation, and
DOES 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le esta demandando)

GARY BRYANT

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Despues de que le entreguen esta citacion judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a maquina en esta corte.

Una carta o una llamada telefonica no le ofrecera proteccion; su respuesta escrita a maquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefonico).

Case Number: (Numero del Caso)
C483981

The name and address of the court is:

(El nombre y direccion de la corte es)

LOS ANGELES COUNTY SUPERIOR COURT
111 North Hill Street
Los Angeles, California 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

GREENE, O'REILLY, AGNEW & BROILLET
1122 Wilshire Boulevard
Los Angeles, California 90017
(213) 482-1122

DATE: (Fecha) Jan 27, 1984

John J. Corcoran, County Clerk, by
M. S. Smith, Deputy
(Actuario) (Delegado)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. () as an individual defendant.
2. () as the person sued under the fictitious name of (specify):
3. (X) on behalf of (specify):

Ford Motor Company, a corporation

under: (X) CCP 416.10 (corporation)

() CCP 416.20 (defunct corporation)

() CCP 416.40 (association or partnership)

- () CCP 416.60 (minor)
- () CCP 416.70 (conservatee)
- () CCP 416.90 (individual)
- () other :

4. () by personal delivery on (date) :

(Proof of Service omitted in printing)

GREENE, O'REILLY, AGNEW & BROILLET

A Law Corporation
 1122 Wilshire Boulevard
 Los Angeles, California 90017-1993
 (213) 482-1122
 (213) 482-1350

Attorneys for Plaintiff

SUPERIOR COURT OF THE
 STATE OF CALIFORNIA FOR THE
 COUNTY OF LOS ANGELES

GARY BRYANT,)	
	)	CASE NO.
Plaintiff,	)	C483981
)	
vs.	)	COMPLAINT
	)	FOR DAMAGES
FORD MOTOR COMPANY, a	)	(PERSONAL
corporation, and DOES 1	)	INJURIES)
through 50, inclusive,)	
	)	(Filed
Defendants.	)	Jan. 27, 1984)
_____)	

COMES NOW the plaintiff, and for causes of action against defendants, and each of them, complains and alleges as follows:

GENERAL ALLEGATIONS

1. The true names and/or capacities, whether individual, corporate, associate or otherwise of defendants, DOES 1 through 50, inclusive, and each of them, are unknown to plaintiff who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes, and upon such information and belief alleges, that each of the defendants fictitiously named herein as a DOE is

legally responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to and proximately caused the injuries and damages to plaintiff as hereinafter alleged. The plaintiff will seek leave of Court to amend this Complaint to insert the true names and/or capacities of such fictitiously named defendants when the same have been ascertained.

2. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, defendants, and each of them, including DOES 1 through 50, inclusive, and each of them, were the agents, servants, employees and/or joint venturers of their co-defendants, and were, as such, acting within the course, scope and authority of said agency, employment and/or venture and that each and every defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring of each and every other defendant as an agent, employee and/or joint venturer.

3. At all times mentioned herein, the plaintiff was and now is a resident of the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned herein, the defendant, FORD MOTOR COMPANY, was and now is a corporation organized and existing under and by virtue of the laws of the State of California, and that said defendant was and is authorized to do and is doing business in the State of California and that said defendant has regularly conducted business in the State of California.

5. That at all times mentioned herein, defendants, and each of them, were and are engaged in the business

of manufacturing, fabricating, designing, assembling, distributing, buying, selling, inspecting, servicing, repairing, marketing, warranting, modifying, leasing and advertising a certain Ford Van, Model No. P-800, and each and every component part thereof, for use in interstate commerce and in the State of California.

FIRST CAUSE OF ACTION

(Negligence)

6. Plaintiff realleges as though fully set forth at length and incorporates herein by reference, all of the allegations and statements contained in paragraphs 1 through 5, inclusive, of the General Allegations above.

7. That at all times mentioned herein, defendants, and each of them, negligently and carelessly manufactured, fabricated, designed, assembled, distributed, bought, sold, inspected, serviced, repaired, marketed, warranted, modified, leased and advertised a certain Ford Van, Model No. P-800, and each and every component part thereof, in that same was capable of causing, and in fact did cause, personal injuries to the user and consumer thereof, while being used in a manner reasonably foreseeable, thereby rendering same unsafe and dangerous for use by the consumer, user or bystander.

8. On or about March 1, 1983, plaintiff, while on the premises of his employer, was using said Ford Van, Model No. P-800, and each and every component part thereof, as further described in paragraph 5 above.

9. That at all times mentioned herein, the defendants, and each of them, were engaged in the business of manu-

facturing, fabricating, designing, assembling, distributing, buying, selling, inspecting, servicing, repairing, marketing, warranting, leasing, modifying and advertising that certain Ford Van, Model No. P-800, and each and every component part thereof, which defendants knew, or in the exercise of reasonable care should have known, would be used without inspection for defects in its parts, mechanisms or design.

10. On or about March 1, 1983, as a proximate result of the negligent and careless conduct of the defendants, and each of them, as aforesaid, while using said Ford Van, Model No. P-800, and each and every component part thereof, plaintiff suffered severe and permanent injuries to his person, including, but not limited to, an injury to his back, neck, leg and nervous system.

11. As a direct and proximate result of the conduct of the defendants, and each of them, plaintiff was hurt and injured in his health, strength and activity, sustaining injuries to his body and shock and injury to his nervous system and person, all of which said injuries have caused and continue to cause the plaintiff great physical, mental and nervous pain and suffering. Plaintiff is informed and believes, and thereupon alleges, that said injuries will result in some permanent disability to him, all to his general damage in an amount which will be stated according to proof, pursuant to *California Code of Civil Procedure*, Section 425.10, which amount is in excess of Twenty-Five Thousand Dollars (\$25,000.00).

12. As a direct and proximate result of the conduct of the defendants, and each of them, as aforesaid, plaintiff was compelled to and did employ the services of hos-

pitals, physicians, surgeons, nurses and the like, to care for and treat him, and did incur hospital, medical, professional and incidental expenses, and plaintiff is informed and believes, and thereupon alleges, that by reason of his injuries, he will necessarily incur additional like expenses for an indefinite period of time in the future, the exact amount of such expenses will be stated according to proof, pursuant to *California Code of Civil Procedure*, Section 425.10.

13. As a direct and proximate result of the conduct of the defendants, and each of them, as aforesaid, plaintiff was prevented from attending to his usual occupation, and plaintiff is informed and believes, and thereupon alleges, that he will thereby be prevented from attending to his usual occupation for a period of time in the future, and thereby will also sustain a loss of earning capacity, in addition to lost earnings, past, present and future, the exact amount of such losses is unknown to plaintiff at this time, and when said amounts are ascertained, the plaintiff will ask leave of Court to amend this Complaint and allege said amounts.

SECOND CAUSE OF ACTION

(Breach of Warranty)

14. Plaintiff realleges as though fully set forth at length and incorporates herein by reference, all of the allegations and statements contained in paragraphs 1 through 5, inclusive, of the General Allegations above.

15. That the defendants, and each of them, impliedly and expressly warranted to plaintiff that said Ford Van, Model No. P-800, and each and every component

part thereof, was fit for the purpose for which it was to be used and was free from design and manufacturing defects.

16. That said Ford Van, Model No. P-800, and each and every component part thereof, was not free from such defects nor fit for the purpose for which it was to be used, and was, in fact, defectively manufactured and designed and imminently dangerous to consumers, users and bystanders, in that same was capable of causing, and in fact did cause, personal injury to the user and consumer thereof, while being used in a manner reasonably foreseeable, thereby rendering same unsafe and dangerous for use by the consumer, user or bystander.

17. As a direct and proximate result of the breaches of warranty by the defendants, and each of them, as aforesaid, while using said Ford Van, Model No. P-800, and each and every component part thereof, plaintiff suffered severe and permanent injuries to his person, including but not limited to an injury to his back, neck, leg and nervous system.

18. Plaintiff realleges as though fully set forth at length, and incorporates herein by reference, all of the allegations and statements contained in paragraphs 11 through 13, inclusive, of the First Cause of Action above.

THIRD CAUSE OF ACTION

(Strict Liability)

19. Plaintiff realleges as though fully set forth at length, and incorporates herein by reference, all of the allegations and statements contained in paragraphs 1 through 5, inclusive, of the General Allegations above.

20. That at all times mentioned herein, defendant , and each of them, manufactured, fabricated, designed, assembled, distributed, bought, sold, inspected, serviced, repaired, marketed, warranted, leased, modified and advertised a certain Ford Van, Model P-800, and each and every component part thereof, which contained design and manufacturing defects, in that same was capable of causing and in fact did cause personal injuries to the user and consumer thereof while being used in a manner reasonably foreseeable, thereby rendering same unsafe and dangerous for use by the consumer, user or bystander.

21. As a direct and proximate result of the conduct of the defendants, and each of them, in manufacturing, fabricating, designing, assembling, distributing, buying, selling, inspecting, servicing, repairing, marketing, warranting, leasing, modifying and advertising said Ford Van, Model No. P-800, and each and every component part thereof, which contained design and manufacturing defects, as aforesaid, plaintiff suffered severe and permanent injuries to his person, including, but not limited to, an injury to his back, neck, leg and nervous system.

22. Plaintiff realleges as though fully set forth at length, and incorporates herein by reference, all of the allegations and statements contained in paragraphs 11 through 13, inclusive, of the First Cause of Action above.

WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows :

1. For general damages in excess of Twenty-Five Thousand Dollars (\$25,000.00), and according to proof;

2. For hospital, medical, professional and incidental expenses, according to proof;

3. For loss of earnings and loss of earning capacity, according to proof;
4. For prejudgment interest, according to proof;
5. For costs of suit incurred herein;
6. For damages to plaintiff's property and economic damage related thereto, according to proof.
7. For such other and further relief as the Court may deem just and proper.

DATED: January 24, 1984.

GREENE, O'REILLY, AGNEW
& BROILLET

/s/ Timothy J. Wheeler
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 Petitioner Ford Motor Company March 29, 1984)

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

GARY BRYANT,	) NO. CV84 2049
	) PAR (Mex)
Plaintiff,)
	) PETITION FOR
v.	) REMOVAL OF
	) CIVIL ACTION;
FORD MOTOR COMPANY, a	) MEMORANDUM
corporation, and DOES 1	) OF POINTS AND
through 50, inclusive,	) AUTHORITIES
	) IN SUPPORT
Defendants.	) THEREOF; AND
_____	) VERIFICATION

Defendant Ford Motor Company, a Delaware corporation located in and with its principal place of business in Michigan, hereby respectfully petitions this Court for Removal pursuant to 28 U.S.C. § 1441 and avers as follows:

1. Ford Motor Company ("Ford") is the only named defendant in a civil action commenced on January 27, 1984, in the Superior Court of the State of California for the County of Los Angeles, entitled, "Gary Bryant vs. Ford Motor Company, a corporation, and Does 1 through 50, inclusive, Defendants," bearing Case No. C 483981 (hereinafter "said action").

2. Copies of the summons and complaint in said action were first received by Ford through its authorized representative on March 1, 1984. Therefore, this petition is filed in this Court within 30 days of receipt by petitioner of the initial pleading, pursuant to 28 U.S.C. § 1446(b). Said summons and complaint are annexed hereto as Exhibit 1 and are incorporated herein by reference.

3. Said action is a civil action for negligence, breach of warranty and strict liability, of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332. Petitioner is entitled to remove said action to this Court pursuant to 28 U.S.C. § 1441 in that at the time of commencement of said action, and at all times thereafter, said action was and is between citizens of different states; the amount in controversy exceeds the sum of Ten Thousand Dollars (\$10,000), exclusive of interest and costs; and none of the parties in interest properly joined and served as defendants is a citizen of the state in which said action is brought.

4. As alleged by plaintiff Gary Bryant, and as petitioner Ford is informed and believes, Gary Bryant was at the time of commencement of said action, and still is, an individual citizen of the State of California, thus is a citizen only of the State of California for the purposes of this petition as provided in 28 U.S.C. § 1332(c).

5. Petitioner Ford was at the time of commencement of said action, and at all times thereafter, incorporated under the laws of the State of Delaware and has its principal place of business in the State of Michigan, and thus is a citizen only of the State of Delaware and the State of Michigan for the purposes of this petition as provided

in 28 U.S.C. § 1332(c). Ford, the only named defendant, is not a citizen of the State of California.

6. At the time of the commencement of said action, and at all times thereafter, the amount in controversy exceeded the sum of Ten Thousand Dollars (\$10,000), exclusive of interest and costs, in that plaintiff prays for, among other things, \$25,000.00 in damages.

7. "Does 1 through 50, inclusive" are also named as defendants, but plaintiff's complaint indicates that said Does' true names and capacities are unknown. Plaintiff alleges no facts which identify these "Doe" defendants, nor does plaintiff allege where any of these Doe defendants are domiciled or reside. Plaintiff's factual allegations are directed solely at the named defendant. No attempt has been made to identify the Doe defendants or even allege generally that they are legally responsible for the conduct complained of. In such circumstances, as a matter of law, the Doe defendants are mere phantom parties. The allegations with respect to them are sham and cannot affect the jurisdiction of this Court or the propriety of removal of said action to this Court.

8. Petitioner has filed herewith a bond in the amount of \$500.00 with good and sufficient surety conditioned that petitioner will pay all costs and disbursements incurred by reason of this removal proceeding should it be determined that the action was not removable or improperly removed.

WHEREFORE, petitioner prays that said action now pending in the Superior Court of the State of California for the County of Los Angeles, bearing Case No. C 483981,

be removed to the above-entitled United States District Court.

Dated: March 29, 1984.

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Attorneys for Defendant and
Petitioner Ford Motor Company

MEMORANDUM OF POINTS AND AUTHORITIES

This is an action by plaintiff Gary Bryant against Ford Motor Company alleging negligence, breach of warranty and strict liability. The action was commenced in the Superior Court of the State of California for the County of Los Angeles and is properly removable to this Court for the reasons set forth below.

The removal of cases from State to Federal courts is governed by 28 U.S.C. § 1441, which provides in part:

"... [A]ny civil action brought in a State Court of which the District Courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district and division embracing the place where such action is pending."

Original jurisdiction of the pending action is conferred upon this Court pursuant to § 1332 of the Judicial Code by reason of diversity of citizenship.

Section 1332 provides, in relevant part, that diversity jurisdiction is present where the amount in controversy exceeds \$10,000, exclusive of interest and costs, and where the action is between citizens of different states. The present case meets both of these requirements. The complaint filed by plaintiff Gary Bryant includes a prayer for, among other things, damages of \$25,000.00.

It is likewise clear that complete diversity exists in this case. As set forth in the verified petition herein, and as alleged by plaintiff, Gary Bryant is and was at all times a citizen only of the State of California. Petitioner Ford is incorporated under the laws of the State of Delaware and has its principal place of business in the State of

Michigan, and thus is a citizen only of the State of Delaware and the State of Michigan for purposes of jurisdiction and removal.

The complaint also names "Does 1 through 20, inclusive" as defendants. However, the inclusion of obviously sham and fictitious "Doe" defendants does not defeat diversity jurisdiction, nor does it affect the removability of this case. As the Ninth Circuit has recently made clear, a plaintiff cannot defeat diversity jurisdiction by talismanic reliance on "Doe" allegations which give no clue as to the identity of such fictitious parties or their relationship to the action. *Hartwell Corp. v. Boeing Co.*, 678 F.2d 842, 843 (9th Cir. 1982). See also *Asher v. Pacific Power and Light Company*, 249 F.Supp. 671, 675-77 (N.D. Cal. 1965).

In *Hartwell*, *supra*, the court held that the case was properly removable to federal court where the Doe defendants were mentioned only in the caption of the complaint and in a general charging allegation that they "participated in the acts hereinafter complained of, either by ratifying them, or cooperating in them, or otherwise" *Id.* at 893. The court concluded that:

" . . . a plaintiff cannot defeat diversity merely by inserting an unidentified Doe into a complaint without giving us some clue who the Doe might be, how the Doe might fit into the charging allegations, or how the Doe might relate to other parties."

678 F.2d at 843.

The conclusion by the Ninth Circuit is particularly pertinent to this action. In the present action, as in the *Hartwell* case, the Doe defendants only appear in the cap-

tion of the complaint and are nominally mentioned in the first paragraph of the complaint. The complaint gives no other clue to their identity or to any possible relationship of these fictitious parties to this action. The inclusion of Doe defendants in this action is patently insufficient to defeat removal.

Under the rule enunciated in the *Hartwell* case, and the cases on which it relied, the obviously sham and fictitious Doe defendants named in the present action must be disregarded for purposes of determining diversity jurisdiction. Thus, the present case is one between citizens of the State of Delaware and the State of Michigan (petitioner) and the State of California (plaintiff Gary¹ Bryant), and diversity is clearly established under 28 U.S.C. § 1332.

The only remaining question is whether the petition for removal is timely. Section 1446(b) of the Judicial Code provides that a petition is timely if it is filed within 30 days of receipt by the defendant of the initial pleading which establishes that the case is removable. As the petition herein states, petitioner Ford, through its authorized representative, first received copies of the summons and complaint on March 1, 1984. The present petition for removal having been filed within 30 days of that date, and all other conditions for removal having been met, petitioner is entitled to removal of the pending action to this Court.

Dated: March 29, 1984.

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Richard A. Goette
Attorneys for Defendant and
Petitioner Ford Motor Company

VERIFICATION

I, RICHARD A. GOETTE, declare and state as follows:

I am an attorney admitted to practice before this Court, a partner with the law firm of McCutchen, Black, Verleger & Shea, the attorneys for petitioner Ford Motor Company and one of the attorneys responsible for the representation of petitioner in this action. No officer of petitioner Ford Motor Company is present in or resides in the State of California who is authorized to verify this petition; and I am authorized to make this verification on behalf of petitioner.

I am informed and believe that at the time of the commencement of the within action, petitioner Ford Motor Company was, and still is, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of Michigan and no other state; that plaintiff Gary Bryant was at the time of the commencement of the within action, and still is, an individual citizen of California; and at all relevant times, the amount in controversy in the within action has ex-

ceeded the sum of \$10,000, exclusive of interest and costs, as alleged in the prayer of the complaint.

I have prepared and read the foregoing Petition for Removal and know the contents thereof, and I am informed and believe that the matters stated therein are true, and on that basis allege that said matters are true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on March 29, 1984, at Los Angeles, California.

/s/ Richard A. Goette
Richard A. Goette

EXHIBIT 1

[Summons and Complaint filed January 27, 1984,
see at pp. 4-14.]

PROOF OF SERVICE BY MAIL

I, the undersigned, say: I am and was at all times herein mentioned a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 600 Wilshire Boulevard, Los Angeles, California; that I am employed in the office of McCutchen, Black, Verleger & Shea by a member of the Bar of this Court at whose direction the service mentioned herein below was made.

On March 29, 1984, I served upon each of the persons named below a copy of the document to which this declara-

tion is appended by depositing the same in a mail box, mail chute, or like facility regularly maintained by the Government of the United States at Los Angeles, California, enclosed in sealed envelopes with postage thereon fully prepaid addressed respectively as follows:

Timothy J. Wheeler, Esquire
Greene, O'Reilly, Agnew & Broillet
1122 Wilshire Boulevard
Los Angeles, California 90017

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 29, 1984, at Los Angeles, California.

/s/ Jean G. Green
Jean G. Green

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK, VERLEGER & SHEA
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Attorneys for Defendant
Ford Motor Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

NO. 84 2049 PAR (Mex)

ANSWER OF DEFENDANT
FORD MOTOR COMPANY TO
COMPLAINT FOR DAMAGES

(Filed April 3, 1984)

Defendant Ford Motor Company ("Ford") answering the allegations of the complaint herein, admits, denies and alleges as follows:

ANSWER TO GENERAL ALLEGATIONS

1. Answering paragraphs 1 and 2, Ford lacks sufficient information or belief to answer the allegations contained in said paragraphs and, based upon such lack of information or belief, denies the allegations contained in said paragraphs.

2. Answering paragraph 3, Ford is informed and believes that the allegations contained in said paragraph are true and, based upon such information and belief, admits the allegations contained therein.

3. Answering paragraph 4, Ford admits that it is, and at all times relevant hereto was, a corporation and

alleges that it is incorporated under the laws of the State of Delaware with its principal place of business in the State of Michigan. Save and except that which is expressly admitted herein, Ford denies generally and specifically each, every and all of the remaining allegations contained in said paragraph.

4. Answering paragraph 5, Ford alleges that it is principally engaged in the business of designing and assembling quality motor vehicles. In connection with designing and assembling motor vehicles, Ford also manufactures some component parts of motor vehicles. Save and except that which is expressly admitted herein, Ford denies generally and specifically each, every and all of the remaining allegations contained in said paragraph.

ANSWER TO PURPORTED FIRST CAUSE OF ACTION

5. Answering paragraph 6, Ford incorporates by reference as set forth at length herein each and every allegation, admission and denial contained in its answer to the allegations of the general allegations.

6. Answering paragraph 7, Ford denies generally and specifically each, every and all of the allegations contained in said paragraph and specifically denies that said vehicle was negligently or carelessly manufactured, fabricated, designed, assembled, distributed, sold, inspected, marketed, warranted or advertised.

7. Answering paragraph 8, Ford lacks sufficient information or belief to answer the allegations contained in said paragraph and, based upon such lack of information

or belief, denies the allegations contained in said paragraph.

8. Answering paragraph 9, Ford alleges that it is principally engaged in the business of designing and assembling quality motor vehicles. In connection with designing and assembling motor vehicles, Ford also manufactures some component parts of motor vehicles. Save and except that which is expressly admitted herein, Ford denies generally and specifically each, every and all of the remaining allegations contained in said paragraph.

9. Answering paragraphs 10 through 13, Ford denies generally and specifically each, every and all of the allegations contained in said paragraph and specifically denies that plaintiff suffered any injuries or has suffered or will suffer any damages whatsoever.

ANSWER TO PURPORTED SECOND CAUSE OF ACTION

10. Answering paragraph 14, Ford incorporates by reference as set forth at length herein, each and every allegation, admission and denial contained in its answer to the allegations of the general allegations.

1. Answering paragraph 15, Ford lacks sufficient information or belief to answer the allegations contained in said paragraph and, based upon such lack of information or belief, denies the allegations contained in said paragraph.

12. Answering paragraph 16, Ford denies generally and specifically each, every and all of the allegations contained in said paragraph and specifically denies that said vehicle was defectively manufactured or designed.

13. Answering paragraph 17, Ford denies generally and specifically each, every and all of the allegations contained in said paragraph and specifically denies that plaintiff suffered any injuries whatsoever.

14. Answering paragraph 18, Ford incorporates by reference as set forth at length herein, each and every allegation, admission or denial contained in its answer to the first purported cause of action.

ANSWER TO PURPORTED THIRD CAUSE OF ACTION

15. Answering paragraph 19, Ford incorporates by reference as set forth at length herein, each and every allegation, admission and denial contained in its answer to the allegations of the general allegations.

16. Answering paragraphs 20 and 21, Ford alleges that it is principally engaged in the business of designing and assembling quality motor vehicles. In connection with designing and assembling motor vehicles, Ford also manufactures some component parts of motor vehicles. Save and except that which is expressly admitted herein, Ford denies generally and specifically each, every and all of the remaining allegations contained in said paragraph and specifically denies that plaintiff suffered any injuries whatsoever.

17. Answering paragraph 22, Ford incorporates by reference as set forth at length herein, each and every allegation, admission and denial contained in its answer to the allegations of the first purported cause of action.

FIRST AND SEPARATE AFFIRMATIVE DEFENSE

18. As a first and separate affirmative defense to each and every purported cause of action pleaded in the complaint, Ford alleges that at the time and place of the matters alleged in said complaint, plaintiff well knew the risks, hazards and dangers necessarily incident thereto and that, if plaintiff suffered any injuries or is entitled to any damages as alleged in the complaint, said injuries and damages arose from and were caused by said risks, hazards and dangers knowingly and voluntarily assumed by plaintiff.

SECOND AND SEPARATE AFFIRMATIVE DEFENSE

19. As a second and separate affirmative defense to each and every purported cause of action pleaded in the complaint, Ford alleges that the injuries complained of and damages sought by plaintiff in said complaint were caused directly and proximately by plaintiff's own negligence, fault, recklessness or unlawful conduct in and about the matters alleged in the pleading.

THIRD AND SEPARATE AFFIRMATIVE DEFENSE

20. As a third and separate affirmative defense to each and every purported cause of action pleaded in the complaint, Ford alleges that the injuries complained of and damages sought by plaintiff in said complaint were caused directly and proximately by the negligence, fault, recklessness or unlawful conduct of persons other than this answering defendant, whether individual, corporate,

associate or otherwise and whether named or unnamed in said complaint.

FOURTH AND SEPARATE AFFIRMATIVE DEFENSE

21. As a fourth and separate affirmative defense to each and every purported cause of action pleaded in the complaint, Ford alleges that if plaintiff sustained any injuries or is entitled to any damages under the circumstances alleged in the complaint or in any other respect, which is denied, said injuries and damages were wholly or in part directly and proximately caused by plaintiff's own negligence, carelessness, lack of due care and fault or by the negligence, carelessness, lack of due care and fault of third parties. In the event that plaintiff is found to have sustained and to be entitled to any damages, Ford is liable only for that portion of any damages which corresponds to its degree of fault or responsibility and is not liable for any damage attributable to the responsibility, negligence or fault of plaintiff or any other party.

FIFTH AND SEPARATE AFFIRMATIVE DEFENSE

22. As a fifth and separate affirmative defense to each and every purported cause of action pleaded in the complaint, Ford alleges that each and every purported cause of action pleaded fails to state a claim upon which relief can be granted.

WHEREFORE, defendant Ford Motor Company prays:

1. That plaintiff take nothing by his complaint;

2. That in the event that plaintiff is found to have sustained and to be entitled to any damages, the degree of negligence, responsibility or fault of each party who contributed to said damage be determined and defendant Ford be held liable only for that portion of any damages which corresponds to its degree of fault or responsibility; and

3. That defendant Ford have and recover from plaintiff its costs of suit incurred herein and such other and further relief as the Court may deem just and proper in the premises.

Dated: April 3, 1984.

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Richard A. Goette
Attorneys for Defendant
Ford Motor Company

(Proof of service omitted in printing)

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Attorneys for Defendant
Ford Motor Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

No. 84 2049 PAR (Mex)

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT AND
SUMMARY ADJUDICATION OF ISSUES

Date: August 20, 1984

Time: 10:00 a.m.

(Filed July 9, 1984)

TO PLAINTIFF GARY BRYANT AND TO HIS
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 10:00 a.m. on August 20, 1984, or as soon thereafter as counsel may be heard in the courtroom of the Honorable Pamela A. Rymer, United States District Judge, 312 North Spring Street, Los Angeles, California 90012, defendant Ford Motor Company will and hereby does move the Court pursuant to the provisions of Rule 56(d) of the Federal Rules of Civil Procedure for an order granting summary adjudication of the issues herein raised.

By this motion, Ford will and hereby does seek an order specifying that:

1. The plaintiff's negligence claim as alleged in the first cause of action of the complaint be dismissed as a matter of law.

2. The plaintiff's breach of warranty claim as alleged in the second cause of action of the complaint be dismissed as a matter of law.

3. The plaintiff's strict liability claim as alleged in the third cause of action of the complaint be dismissed as a matter of law.

Ford's motion for summary adjudication of these issues will be and is made on the ground that there is no genuine issue as to any material fact regarding the various claims raised by plaintiff and addressed herein, and that this moving defendant is entitled to adjudication of these issues as a matter of law.

This motion will be based upon this notice, the accompanying memorandum of points and authorities, the accompanying affidavit, the annexed exhibits, such other documentary evidence and testimony as may be submitted at the hearing, and all the pleadings, records and papers on file herein.

Dated: July 9, 1984.

Respectfully submitted,
HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Richard A. Goette
Attorneys for Defendant
Ford Motor Company

(Proof of Service omitted in printing)

HOWARD J. PRIVETT
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(213) 624-2400
Attorneys for Defendant
Ford Motor Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

No. 84 2049 PAR (Mex)

Date: August 20, 1984

Time: 10:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND FOR SUMMARY
ADJUDICATION OF ISSUES

(Filed July 9, 1984)

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I. Preliminary Statement

A. Introduction

There is no factual or legal support for the claims raised by plaintiff Gary Bryant against defendant Ford Motor Company ("Ford"). An examination of plaintiff's liability claims has in fact demonstrated that Ford is an entirely inappropriate party to this action.

This is a relatively uncomplicated personal injury action in which plaintiff contends that on March 1, 1983, while in the course and scope of his employment with United Parcel Service, Inc. ("UPS") and while driving a 1968 truck owned by his employer, he was involved in a single vehicle accident. As a consequence, plaintiff reportedly sustained certain personal injuries to, among other areas, his back. Ford was joined as defendant based upon plaintiff's belief that the truck he was operating was designed and manufactured by Ford. The underlying complaint contains claims for relief premised upon negligence, breach of warranty and strict liability. There is no indication in the complaint as to the particular basis of plaintiff's claims—merely that the underlying vehicle was a Ford product and was somehow defective.

Plaintiff filed this action in state court on January 27, 1984, and Ford was served with the complaint on March 1, 1984. Ford thereafter petitioned for the removal of the action based upon diversity jurisdiction. Pretrial discovery since removal has now established the basis for plaintiff's liability theories. In essence, plaintiff contends that he sustained injuries in the vehicle due to the inadequacy of the vehicle seat belt system and the driver's seat

and therefore contends that the design and manufacture of the vehicle was defective.

While plaintiff may have a claim for relief against some party, recovery against Ford is not justified under any of the theories pleaded by plaintiff. Ford built only the bare chassis of the vehicle in question. It was not connected in any way with the body of the vehicle, including the restraint system and driver's seat which have been implicated in this action and allegedly caused the injuries sustained by plaintiff.

Plaintiff's negligence claim cannot lie against Ford since there is no suggestion of a breach of any duty owed by Ford to plaintiff nor is there any relationship of proximate cause between these injuries and any action or omission on the part of Ford. Similarly, the breach of warranty and strict products liability allegations do not suggest, nor does the record support, any defect in the product designed, manufactured, assembled or sold by Ford. California courts have consistently refused to extend liability to manufacturers of component parts which happened to be attached to defective products which cause an injury.

For each and all of the foregoing reasons and as more fully discussed below, Ford respectfully submits that its motion for summary judgment should be granted.

B. Statement of Facts and Plaintiff's Contentions

Plaintiff in this action, Gary Bryant, alleges that he was injured on March 1, 1983, while operating a truck owned by UPS. While the original complaint offers little insight into plaintiff's claims, all information provided

since Ford appeared in the action has remained consistent. (For ease of reference, we have attached a copy of the complaint to the accompanying appendix as Exhibit A.) In sum, plaintiff has based his claim for recovery upon alleged defects in the design and manufacture of the seat belt system and driver's seat. He has never alleged any design or manufacturing defect in any component of the vehicle designed or assembled by Ford.

At the time of the early meeting of counsel, plaintiff's theories were first disclosed. In the subsequent joint report which was filed with this Court, the basis of this action was described as follows:

"[The] accident involved a truck operated by plaintiff and reportedly owned by United Parcel Service. Ford Motor Company is alleged to be the manufacturer of the vehicle. As against the defendant, plaintiff contends that the passive restraint system was inadequate due to the absence of a shoulder harness."

Exhibit B, p. 2.

As will be explained below, Ford had no involvement with the manufacture of the body of the vehicle or the restraint system.

In later propounding contention interrogatories to plaintiff, Ford sought the identity of "each and every" component of the vehicle which plaintiff claims contained a design or manufacturing defect. Plaintiff elaborated upon his liability theories only by including the driver's seat. His verified interrogatory responses provide the gravamen of his claim.

Interrogatory No. 4:

In paragraph 20 of the complaint, you allege, among other things, that the vehicle which plaintiff was operating at the time of his accident, and each component thereof, "contained design and manufacturing defects." With respect to said allegation, do you contend that the subject vehicle or any component thereof contained any design defects? If so:

(a) Describe in detail each and every part or component of the subject vehicle which you contend contained a design defect;

(b) Describe in detail each error, if any, which you claim was made in the design of any part or component of the subject vehicle;

(c) Describe in detail how each part or other component of the subject vehicle that you claim was defectively designed could have been designed better; and

(d) Identify all evidence, including each person and document, which you contend supports your contention, in whole or in part, that any part or component of the subject vehicle was defectively designed.

Response to Interrogatory No. 4:

Yes.

(a) the seat belt system as well as the driver's seat;

(b) Both the seat belt system and the seat were inadequate in their design and manufacture so as to substantially contribute to plaintiff's injuries;

(c) Plaintiff objects to this subpart of this interrogatory. As asked it requires the plaintiff to do the work of the defendant, which was to design the subject vehicle properly. Plaintiff is under no obligation to do so;

(d) Plaintiff is unaware of any such documentation at this time, however discovery and investigation are continuing.

Exhibit C, Response to interrogatory no. 4, pp. 5-6.

The following interrogatory sought the identity of each component which plaintiff claims was defectively manufactured. The response was identical and in fact expressly incorporated the prior answer. *See Exhibit C, Response to interrogatory no. 5, pp. 6-7.*

Plaintiff has thus simply claimed that "Ford Motor Company failed to implement in its design of the subject vehicle an adequate safety belt system as well as an adequate seating for the driver of the subject vehicle." *See Exhibit C, Response to interrogatory no. 3, p. 4.* Plaintiff is plainly wrong, however, in his assertion that Ford somehow had any responsibility for the design of the seat belt system or seat. It did not.

In responding to interrogatories propounded by plaintiff, Ford has explained that it designed and assembled only certain component parts associated with the chassis of the vehicle reportedly involved in the underlying accident. *See Exhibit D, Response to interrogatory no. 1, page 3.* Ford further explained that it did not design or manufacture the body of that vehicle. *See Exhibit D, Response to interrogatory no. 17, page 9.* Ford has moreover confirmed that it did not manufacture the seat belt or any component part thereof which was part of the vehicle at the time of the accident. *See Exhibit D, Response to interrogatory no. 20, page 11.*

While the contentions of plaintiff and the discovery responses of Ford provide little reason for the joinder of Ford, the attached affidavit demonstrates that there can be no reason for Ford to remain a party to this action.

C. Ford Had No Responsibility for any Component Which Plaintiff Claims is Defective

The accompanying affidavit of James I. Scott demonstrates the absence of any factual basis for plaintiff's alle-

gations against Ford. Mr. Scott has been employed by Ford as an engineer for twenty eight years and is competent to render an opinion concerning the absence of any support for plaintiff's claims based upon his experience and inspection of the subject vehicle.

Mr. Scott has explained that after plaintiff and UPS provided the proper identification of the vehicle involved in the underlying accident, that vehicle was inspected by representatives of Ford and plaintiff at a UPS service center in San Marcos, California on May 10, 1984. (See Scott affidavit, ¶ 10.) Mr. Scott had an opportunity to examine the vehicle, including the chassis, body and interior components. The vehicle is the typically brown UPS delivery van which has become a common sight on our streets and highways.

The examination of the vehicle revealed that *only* the chassis is a Ford product. (Scott affidavit, ¶ 12.) Based upon the reported vehicle identification number, the inspection confirmed that the chassis was one of the P-500 series which was built at the Michigan truck assembly plant in July 1968. (Scott affidavit, ¶ 11.) While inspection of the vehicle body failed to disclose the identity of the manufacturer (Scott affidavit, ¶ 13), the body of the vehicle, including the seat belt system and driver's seat, were not designed, manufactured or assembled by Ford. (Scott affidavit, ¶ 14.)

Mr. Scott has been employed in various engineering capacities at Ford and has had engineering responsibilities for the design and assembly of various chassis. (Scott affidavit, ¶ 4.) As Mr. Scott explains, the chassis provides only the foundation for the finished vehicle and basically includes only the power train and suspension system. (Scott affidavit, ¶ 4.) While the chassis can be independently driven to facilitate shipment, Ford did not install a driver's seat or seat belt system on any P-500 chassis. (Scott affidavit, ¶ 6.) Indeed, the P-500 series chassis were driven by installing a wooden dunnage frame to the chassis

and placing a wooden crate on the frame to allow use of the steering wheel. (Scott affidavit, ¶ 7.) Ford never designed, manufactured, assembled or installed any restraint system or driver's seat for any P-500 chassis which was sold as a single incomplete unit. (Scott affidavit, ¶ 8.)

Since Ford does not maintain sales records for more than ten years, it has no information concerning the purchaser of the particular chassis of the subject vehicle. (Scott affidavit, ¶ 13.) However, no matter which individual or organization purchased this chassis, Ford has never provided any seat belt system or driver's seat with any P-500 chassis. (Scott affidavit, ¶ 8.) Ford has moreover relied entirely upon the manufacturer of the completed vehicle to select and install all necessary equipment, including any seat belt system and driver's seat. (Scott affidavit, ¶ 8.) Such decisions are exclusively within the control of the chassis purchaser who decides upon the type of vehicle body and interior that will be manufactured, assembled and then installed on the chassis. (Scott affidavit, ¶ 8.) Ford similarly relies upon the manufacturer of the completed vehicle to certify that all equipment, including the seat belt system and driver's seat, is in compliance with any applicable governmental regulations. (Scott affidavit, ¶ 9.)

In view of plaintiff's liability theories, there is simply no factual basis for the involvement of Ford in this action.

II. *Argument*

- A. *California Courts Have Consistently Refused to Impose Liability on the Supplier of a Nondefective Component Joined to a Separate, Allegedly, Defective Part*

The only involvement of Ford Motor Company in this matter was to supply a bare chassis to an independent purchaser. There is no allegation, contention or discovered fact which suggests that anything other than the seat belt system or driver's seat was a proximate cause of plain-

tiff's alleged injuries. As discussed above, while the restraint system and driver's seat *added* to the bare chassis may contain defects which support plaintiff's claim under negligence, breach of warranty and products liability theories, the parts of the vehicle manufactured by Ford clearly do not.

California courts have refused to hold suppliers of nondefective component parts, like Ford in this case, liable for any product claims. For a supplier or manufacturer of a product to be liable for a defect, plaintiff must establish a defect in the product offered by that supplier or manufacturer. The court in *Wiler v. Firestone Tire & Rubber Co.*, 95 Cal.App.3d 621, 157 Cal. Rptr. 248 (1979), for example, faced a situation in which a plaintiff had been injured when his automobile left the road at high speed. It was discovered later that the car had a deflated tire and plaintiff sued both the manufacturer of the tire and the manufacturer of the car.

Discovery revealed no defects in the tire. It was in fact the claim of plaintiff that no defects were present in the tire, except for the valve stem which had been manufactured and attached to the tire by the automobile manufacturer, not the tire company. Summary judgment was granted in the tire company's favor and upheld by the Court of Appeals.

"A component part manufacturer may be held liable for damages caused by a component part which was defective at the time it left the component part manufacturer's factory. . . . [citations omitted.]

"However, as plaintiffs' evidence shows no defect in the component part, the tire, which was manufactured by Firestone, it may not be held liable. (*Zambrana v. Standard Oil Co.*, 26 Cal.App.3d 209, 216-219, 102 Cal.Rptr. 699 (1972); *McGoldrick v. Porter-Cable Tools*, 34 Cal.App.3d 885, 888, 110 Cal.Rptr. 481 (1973); *Kalinowski v. Joseph T. Ryerson & Son, Inc.*,

242 App.Div. 43, 272 N.Y.S. 759, 762 (1934.)"
95 Cal.App.3d at 629.

In this case, plaintiff has not attempted to make any showing of defect in the chassis supplied by Ford.

The reasoning and conclusion of the court in *Wiler* apply equally to this action. Discovery has revealed no claimed defect in the chassis built by Ford. Plaintiff has claimed that the only defects exist in the restraint system and driver's seat. Those components were manufactured and then attached to the finished vehicle by other parties, not unlike the defective valve stem attached to the Firestone tire. Moreover, just as Firestone may rely on the care of an automobile manufacturer (*Id.* at 629), Ford could reasonably believe that manufacturers and assemblers of seats and restraint systems would insure proper design of those mechanisms. Ford is similarly entitled to summary judgment in its favor.

Other cases confirm the *Wiler* court result. In *McGoldrick v. Porter-Cable Tools*, 34 Cal.App.3d 885, 110 Cal. Rptr. 481 (1973), plaintiff was injured when a power saw flew apart. He sued both the manufacturer of the saw and the manufacturer of the stand to which the saw had been attached. The trial court granted a non-suit in favor of the manufacturer of the stand, stating, "When the evidence is so palpably insufficient that a verdict against [that defendant] could not be sustained, it is the duty of the trial court to forestall the cost and delay of further proceedings by granting defendant's motion for non-suit . . . [citations omitted]" 34 Cal.App.3d at 888. There is simply no legal basis for suppliers of non-defective component parts to be held liable when those parts are attached to defective products which may cause injury.

The cited authorities and uncontroverted facts compel the conclusion that, as a matter of law, Ford may not be held liable for providing the bare chassis to which the finished body which contained an allegedly defective driver's

seat and restraint system were eventually attached. Summary judgment for Ford is the proper remedy.

B. Negligence may Not Lie Against Ford since Plaintiff's Injuries were Not Caused by any Ford Product

Plaintiff's first cause of action alleges negligence in the design and manufacture of the vehicle. The court in *Premo v. Grigg*, 237 Cal.App.2d 192, 46 Cal.Rptr. 683 (1965) set out the classic definition of an action in negligence.

"A cause of action for negligence consists of four elements: (1) the duty of the defendant with respect to the injured person's injury; (2) the violation of that duty; (3) the causal relation between the defendant's conduct and the injury suffered; and (4) the plaintiff's loss, i.e. damages [citations omitted.]"

237 Cal.App.2d at 195.

An analysis of these criteria in this case demonstrates that no claim of negligence could lie against Ford.

First, it was not Ford's duty to provide an adequate seat belt system or driver's seat. It was the duty of the designers, manufacturers and assemblers of the restraint system and seat to provide for the safety of that mechanism for its intended use. Ford could reasonably depend on their abilities to design, assemble and attach a safe restraint system and seat. *Wiler v. Firestone Tire & Rubber Co.*, 95 Cal.App. 625, 629-30, 157 Cal.Rptr. 248 (1979).

Second, even if Ford owed a duty to the plaintiff (which is extremely doubtful), there was no breach of that duty. Any breach of duty resulted from possible defective manufacture, design and assembly of the restraint system and driver's seat. Plaintiff has alleged no failure

in the chassis to perform in a safe and reasonable manner. There is no question that Ford fully performed its duty of safety in relation to that component.

Third, the law of negligence is clear that the plaintiff has the burden of proving that the defendant's defective product proximately caused his injury. *See, e.g., Miller v. Los Angeles County Flood Control Dist.*, 8 Cal.3d 689, 704, 106 Cal.Rptr. 1, 505 P.2d 193 (1973); *McLeery v. Eli Lilly & Co.*, 87 Cal.App.3d 77, 82, 150 Cal.Rptr. 730 (1978).

Plaintiff here is patently unable to establish a causal relation between Ford's product and his injury. According to his own contentions and because of the allegedly faulty restraint system and driver's seat, plaintiff was injured in the underlying accident. Ford's product played no part in the alleged injuries; it was merely present at the same place and time. This is not sufficient to sustain a finding of proximate cause.

C. *The Absence of any Defect Precludes Plaintiff's Breach of Warranty Claim*

Plaintiff's breach of warranty theory also requires proof of a design or manufacturing defect in order to establish that Ford breached any warranty obligations. *See, e.g., Trust v. Arden Farms Co.*, 50 Cal.2d 217, 324 P.2d 583 (1958), which involved an allegedly defective glass milk bottle which shattered and injured plaintiff. The California Supreme Court held that evidence of a defect in the product was a prerequisite to sustain recovery against the defendant milk company under a warranty theory.

"Was there a breach of warranty upon the part of Arden? No. *There was no evidence that the bottle*

was defective when delivered by Arden to plaintiff, and therefore there is no basis for claiming any breach of warranty."

50 Cal.2d at 223 (emphasis added).

There is similarly no evidence or contention that the chassis embodied any defect. Absent such a claim, there can be no sustainable breach of warranty.

D. *No Strict Liability Claim Lies Against Ford since No Defect Existed in any Ford Product and No Ford Product Caused Plaintiff's Injury*

It is axiomatic that for Ford to be strictly liable for injuries caused by defects in its product, such defects must actually be present in the product manufactured. As set forth above, any defect in the restraint system or driver's seat which allegedly injured plaintiff did not exist in the chassis provided by Ford. Plaintiff is thus unable to show that any Ford product proximately caused his injuries.

The California Supreme Court in *Miller v. Los Angeles Flood Control District*, 8 Cal.3d 689, 703-04, 106 Cal. Rptr. 1, 505 P.2d 1983 (1973), has identified the limits of strict products liability.

"Strict liability in tort does not apply unless the product . . . allegedly causing the injury was in a defective condition. (*Cronin v. J.B.E. Olson Corp.*, 8 Cal.3d 121, 130, 104 Cal.Rptr. 433, 501 P.2d 1153 (1972); *Greenman v. Yuba Power Products, Inc.*, 59 Cal.2d 57, 62, 27 Cal.Rptr. 697, 377 P.2d 897 (1963). The burden is upon the plaintiff to establish the defective condition of the product and to prove that the defect proximately caused plaintiff's injury. (*Grinnell*

v. Charles Pfizer & Co., 274 Cal.App.2d 424, 435, 79 Cal.Rptr. 369 (1969); *Preston v. Up-Right, Inc.*, 243 Cal.App.2d 636, 639, 52 Cal.Rptr. 679 (1966).”

The allegedly defective condition in this case simply has no connection with any product manufactured by Ford.

To maintain a cause of action for strict products liability, the plaintiff must establish (1) that defendant was somehow responsible for a defective product which was in its defective condition at the time it was manufactured and (2) a causal relation between the defect and the injury. *See e.g., Baker v. Chrysler Corp.*, 55 Cal.App.3d 710, 715, 127 Cal.Rptr. 745 (1976). *Preissman v. Ford Motor Co.*, 1 Cal.App.3d 841, 852, 82 Cal.Rptr. 108, 114 (1969), *Tresham v. Ford Motor Co.*, 275 Cal.App.2d 403, 410, 79 Cal.Rptr. 883, 887 (1969).

It is clear from the facts in this action that plaintiff does not contend that the Ford chassis at the time Ford manufactured and sold it was defective and caused an injury to the plaintiff. The only purported defects claimed by plaintiff pertain to the restraint system and driver's seat. Each of these products was designed, manufactured, assembled and installed by other parties. The proximate cause of the alleged injuries, in the products liability context, could only be the restraint system and driver's seat. Ford simply had nothing to do with that apparatus and there is no conceivable basis for a strict liability claim against Ford for injuries caused by such allegedly defective products. Summary judgment should be granted in Ford's favor.

III. Conclusion

There is no evidence or contention to implicate Ford in this action for injuries allegedly sustained by plaintiff. To the contrary, the evidence in this action and the decisional authorities fully exonerate Ford. The claims for relief raised by plaintiff can and should be summarily adjudicated as a matter of law.

Dated: July 9, 1984.

Respectfully submitted,
HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Attorneys for Defendant
Ford Motor Company

AFFIDAVIT OF JAMES I. SCOTT

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

JAMES I. SCOTT, being first duly sworn, deposes and states as follows:

1. I am currently employed as a design analysis engineer by Ford Motor Company ("Ford"). I am personally acquainted with the facts set forth below and, if called as a witness, could and would competently testify to the matters recited in this affidavit.

2. I am a 1957 graduate production engineer from Detroit College of Applied Science located in Detroit.

Michigan. I have also taken courses in mechanical engineering from Old Dominion College in Norfolk, Virginia in 1964 and in engine design from Henry Ford Community College in Dearborn, Michigan in 1966. I am a member of the Society of Automotive Engineers.

3. I have been employed in various engineering capacities with Ford, a summary of which is set forth below:

a. During 1956 to 1958, I was a production engineer assigned to the Highland Park Assembly Plant located in Highland Park, Michigan. The facility was involved with the design and assembly of all truck lines.

b. During 1958 to 1960, I was assigned to the Louisville Assembly Plant located in Louisville, Kentucky as a truck product engineer. That facility was involved with the design and assembly of various medium, heavy and super heavy duty trucks and truck bodies;

c. During 1960 to 1965, I was assigned to the Norfolk Assembly Plant located in Norfolk, Virginia as a vehicle resident engineer. That facility was involved with the design and assembly of light and medium trucks;

d. During 1965 to 1966, I was assigned to the Dearborn Assembly Plant located in Detroit, Michigan, as a vehicle resident engineer. That facility was then involved with the design and assembly of Mustang, Cougar and Falcon automobiles;

e. In 1966 and 1967, I was assigned to the Wayne Assembly Plant located in Wayne, Michigan, and was quality control manager. That facility was involved with the design and assembly of Ford and Mercury automobiles;

f. During 1967 to 1973, I was assigned to the Wixom Assembly Plant located in Wixom, Michigan and was quality assurance manager. That facility was responsible for the design and assembly of Thunderbirds and Lincoln automobiles;

g. During 1973 to 1980, I was assigned to World Headquarters in Dearborn, Michigan, as a product analysis engineer on the quality control staff; and

h. During 1980 to the present, I have been a design analysis engineer assigned to the medium and heavy truck section. In my present capacity, I am responsible for the investigation and analysis of claimed product failures involving medium and heavy trucks.

4. During my employment in various engineering capacities with Ford, I have had an opportunity to participate in the design and assembly of chassis which include only the power train and suspension system. These chassis are designed and assembled for the purpose of supplying incomplete vehicle units to commercial manufacturers who are then fully responsible for the design, manufacture and assembly of the completed vehicle, including the body and most interior components.

5. The P-500 was a particular chassis series which Ford built between the late 1940's and 1979. That chassis series was designed primarily for use in the manufacture and assembly of completed parcel trucks.

6. Ford designed and assembled the base P-500 chassis as a separate incomplete unit. While that chassis was driveable to facilitate the shipment of the unit to the pur-

chaser, the P-500 chassis sold by Ford did not include the finished driver's seat or any seat belt system.

7. To assist in the transportation of that unit and to place the vehicle controls within reach of any operator involved with its shipment, Ford installed a wooden dunnage frame to the P-500 chassis. Instead of installing any type of finished seat, Ford would utilize a wooden crate for the driver to sit on and operate the vehicle.

8. Based upon my employment experience, Ford never designed, manufactured or assembled seats or seat belt systems for the P-500 chassis. Since Ford was providing merely an incomplete unit, the builder of the completed vehicles was responsible for the selection and installation of such equipment.

9. Ford has in fact entirely relied upon the manufacturer of the completed vehicle to certify that all equipment, including the seat belt system and driver's seat, are in compliance with any applicable governmental regulations.

10. On May 10, 1984, I attended an inspection of the vehicle involved in plaintiff's accident which is reportedly owned by United Parcel Service ("UPS") at a UPS service center in San Marcos, California. That inspection was attended by representatives of Ford, UPS and plaintiff in this action. The vehicle was identified by serial number P50BLD59493, license number 1P09925 and UPS number 18603. Although it was not possible to confirm the serial number normally imprinted on the chassis without disassembling the vehicle, the reported license number and UPS number were consistent with the vehicle exam-

ined. The examined vehicle was the same vehicle which was identified to me as having been involved in plaintiff's accident by representatives of UPS.

11. The inspection revealed that the subject vehicle included a P-500 chassis which, based upon the reported serial number, was built at the Michigan Truck Assembly Plant in Wayne, Michigan in 1968.

12. The inspection confirmed that *only* the P-500 chassis of the subject vehicle is a Ford product. The remainder of the vehicle, including the body, seat belt system and driver's seat, were not designed, manufactured or assembled by Ford.

13. During my inspection, I found no apparent identifying plate or label which would have revealed the manufacturer of the completed vehicle. While Ford retains no records beyond ten years which would identify the purchaser of the chassis, such information can presumably be obtained from the original purchaser of the completed vehicle.

14. It is my engineering opinion that the portions of the subject vehicle reportedly involved in plaintiff's accident and which I inspected on May 10, 1984, including the seat belt system and driver's seat, were designed, manufactured and assembled by parties other than Ford Motor Company.

/s/ James I. Scott
James I. Scott

(Jurat omitted in printing)

(Proof of Service omitted in printing)

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(213) 624-2400
Attorneys for Defendant
Ford Motor Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

No. 84 2049 PAR (Mex)

APPENDIX OF EXHIBITS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT AND FOR
ADJUDICATION OF ISSUES

(Filed July 9, 1984)

Date: August 20, 1984

Time: 10:00 a.m.

Annexed hereto for the Court's convenience are the following exhibits to the Motion for Summary Judgment and Summary Adjudication of Issues filed by defendant Ford Motor Company:

Exhibit A Complaint

Exhibit B Joint report of early meeting

Exhibit C Plaintiff's answers to interrogatories propounded by Ford

Exhibit D Ford's answers to interrogatories propounded by plaintiff

Dated: July 9, 1984.

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Attorneys for Defendant
Ford Motor Company

EXHIBIT A

[Summons and Complaint, filed January 27, 1984,
see at pp. 4-14.]

EXHIBIT B

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

No. 84 2049 PAR(Mex)

JOINT REPORT OF
EARLY MEETING

(Filed May 2, 1984)

In accordance with Local Rule 6.1, counsel for the parties personally met on April 19, 1984, and submit the following joint status report:

1. *Preliminary.* Plaintiff's counsel elaborated upon the allegations contained in the complaint and provided details concerning the vehicular accident of March 1, 1983, which forms the subject matter of this action. That accident involved a truck operated by plaintiff and reportedly owned by United Parcel Service. Ford Motor Company is alleged to be the manufacturer of the vehicle. As against the defendant, plaintiff contends that the passive restraint system was inadequate due to the absence of a shoulder harness. Although the precise identification of the involved vehicle remains unclear (model, year, type, etc.), plaintiff's counsel has provided the reported license number which will permit the parties to obtain pertinent records maintained by the California Department of Motor Vehicles and thereby allow for a specific identification. Counsel representing Ford Motor Company agreed to request this information and will attempt to make it available by May 3, 1984.

2. *Discovery.* After it is properly identified, the parties agree that the subject vehicle will be inspected. Such an inspection is essential for identifying all appropriate parties and defining plaintiff's liability theory. The parties are informed and believe that the vehicle is currently located in San Diego and anticipate that it will be inspected by May 31, 1984.

Subsequent to the vehicle inspection, the parties will agree upon a deposition schedule. Analysis of the liability issues will initially include the depositions of plain-

tiff, plaintiff's reported supervisor at United Parcel Service and other employees at United Parcel Service who may have relevant information concerning the plaintiff, his training, the accident and the repair of the subject vehicle. It is probable that additional depositions will be required of plaintiff's examining and/or treating physicians.

After the vehicle is properly identified, plaintiff also intends to serve interrogatories on defendant to ascertain the nature and extent of its involvement with the design, manufacture and assembly of the subject vehicle. It is probable that the defendant will serve contention interrogatories which inquire into the factual basis of plaintiff's liability contentions, together with a request for production of any documents supporting plaintiff's allegations.

Plaintiff intends to depose individuals responsible for the design, manufacture, selection and installation of the passive restraint system in the subject vehicle, as well as those individuals, if any, involved in the testing of said system, both in the subject vehicle and other similar models.

3. *Witnesses.* Plaintiff's counsel identified those witnesses known at this time who are believed to have knowledge of the facts relating to the underlying accident and the injuries allegedly sustained by plaintiff. These witnesses include plaintiff's reported supervisor at United Parcel Service, Andrew Karrin, and physicians who have examined and/or treated plaintiff, including Drs. Hiseon, Varley and Richley.

4. *Documents.* At the early meeting, plaintiff's counsel provided copies of all available medical records from plaintiff's treating physician, Dr. Richard Richley. Those records encompass, among other things, plaintiff's surgeries which he contends were necessitated by the underlying accident. Plaintiff's counsel is seeking to obtain records from other examining physicians and a compilation of all related medical expenses. Plaintiff's counsel will moreover provide earnings records and documents supporting plaintiff's lost wage claim.

5. *Appearance of Additional Parties.* It is likely that the workers' compensation carrier for plaintiff's employer will appear due to benefits paid to plaintiff subsequent to the accident. The parties understand that plaintiff's disability is in fact the subject of pending compensation proceedings. The appearance of additional parties necessary to determine liability issues depends upon the proper vehicle identification and ascertaining which entities, other than defendant Ford Motor Company, may have been involved in the design, manufacture, assembly and sale of the subject vehicle and its component parts.

6. *Settlement.* Due to the current uncertainty concerning the identification of the involved vehicle and the appearance of additional parties, the parties agree that settlement discussions at this juncture are premature.

7. *Trial Estimate.* The parties are unable to estimate the time which will be required for trial due to the current uncertainty concerning the possible appearance of additional parties.

Dated: May 2, 1984.

Respectfully submitted,

HOWARD J. PRIVETT

RICHARD A. GOETTE

McCUTCHEN, BLACK, VERLEGER & SHEA

/s/ Richard A. Goette

Richard A. Goette

Attorneys for Defendant

Ford Motor Company

Dated: May 1, 1984.

GREENE, O'REILLY, AGNEW & BROILLET

/s/ Timothy J. Wheeler

Timothy J. Wheeler

Attorneys for Plaintiff

EXHIBIT C

(Space Below For Filing Stamp Only)

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Los Angeles, California 90017-1993

(213) 482-1122

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)
PLAINTIFF'S RESPONSES TO
INTERROGATORIES PROPOUNDED
BY DEFENDANT, FORD MOTOR
COMPANY
(First Set)

COMES NOW plaintiff, GARY BRYANT, and responds to the first set of interrogatories propounded by defendant, FORD MOTOR COMPANY, as follows, pursuant to Rule 33 of the *Federal Rules of Civil Procedure*.

It should be noted that this responding party has not fully completed his investigation of the facts relating to this case, has not fully completed his discovery in this action and has not completed his preparation for trial. All of the answers contained herein are based only upon such information and documents which are presently available to and specifically known to this responding party and disclose only those contentions which presently occur to such responding party. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in and variations from the contentions herein set forth. The following interrogatory responses are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts which this responding party may later recall. Responding party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed and contentions are made. The answers con-

tained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as is presently known but should in no way be to the prejudice to plaintiff in relation to further discovery, research or analysis.

Interrogatories and Responses

Interrogatory No. 1:

Identify each address you lived at during the ten years prior to the date of the subject accident and the dates you lived at each residence.

Response to Interrogatory No. 1:

1974-November, 1975: 4711 Chickasaw Court, San Diego, CA 92711; December, 1975-August, 1977: 3255 Armstrong Place, San Diego, CA 92711; August, 1977-September, 1978, 4572 Cape May, Ocean Beach, CA; September, 1978-April, 1979: 470122 Sierra Blvd., Mammoth Lakes, CA 93546; May, 1979-October, 1979: 4711 Chickasaw Street, San Diego, CA; October, 1979-February, 1981: 2466 Sunflower Terrace, Vista, CA 92083; February, 1981-May, 1981: 1050 Rock Springs Road, Escondido, CA 92026; May, 1981-April, 1983: 133 West Vermont Avenue, Escondido, CA 92025; May, 1983-June, 1984: 300 South Ivy, #55, Escondido, CA.

Interrogatory No. 2:

With respect to your employment history during the ten year period preceding the date of the subject accident;

(a) Identify the name, address and telephone number of each of your employers during said period and the dates of such employment; and

(b) Identify your rate of pay and your average monthly income received from each employer at the time you began and left each employer.

Response to Interrogatory No. 2:

(a) San Diego County, 1600 Pacific Highway, San Diego, CA, 1974-December, 1977;

(b) \$4.05 per hour to \$4.65 per hour;

(a) United Parcel Service, Ponson Road, San Diego, CA, December, 1977;

(b) Approximately \$5.50 per hour;

(a) United Parcel Service, Ponson Road, San Diego, CA, April, 1978-September, 1978;

(b) Approximately \$5.50 per hour to \$6.00 per hour;

(a) San Diego Nautilus, Morena Blvd., San Diego, CA, May, 1979-April, 1980;

(b) \$5.50 per hour to \$7.00 per hour; averaged 50 hours per week;

(a) Nautilus International, 911 East Valley Parkway, Escondido, CA 92025, May, 1980-July, 1981;

(b) \$8.00 per hour; 40 hours per week;

(a) United Parcel Service, 111 North Bingham Drive, San Marcos, CA 92069, December, 1981;

(b) Approximately \$7.00 per hour; 40 to 50 hours per week;

(a) United Parcel Service, 111 North Bingham Drive, San Marco, CA 92069, December, 1982;

(b) Approximately \$7.20 per hour; 40 to 50 hours per week;

(a) United Parcel Service, 111 North Bingham Drive, San Marcos, CA, February 14, 1983-March 1, 1983;

(b) Approximately \$7.20 per hour; 40 hours per week.

Interrogatory No. 3:

If you contend that the injuries allegedly sustained by you in the subject accident were caused in whole or in part by the acts and/or omissions of Ford Motor Company, please describe and explain each act, omission or combination thereof which you claim caused said injuries.

Response to Interrogatory No. 3:

Without further prejudice to amend, supplement or modify, pursuant to continuing discovery and investigation, the plaintiff answers this interrogatory as follows:

Defendant, Ford Motor Company, failed to implement in its design of the subject vehicle an adequate safety belt system as well as adequate seating for the driver of the subject vehicle.

Interrogatory No. 4:

In paragraph 20 of the complaint, you allege, among other things, that the vehicle which plaintiff was operat-

ing at the time of his accident, and each component thereof, "contained design and manufacturing defects." With respect to said allegation, do you contend that the subject vehicle or any component thereof contained any design defects? If so:

(a) Describe in detail each and every part or component of the subject vehicle which you contend contained a design defect;

(b) Describe in detail each error, if any, which you claim was made in the design of any part or component of the subject vehicle;

(c) Describe in detail how each part or other component of the subject vehicle that you claim was defectively designed could have been designed better; and

(d) Identify all evidence, including each person and document, which you contend supports your contention, in whole or in part, that any part or component of the subject vehicle was defectively designed.

Response to Interrogatory No. 4:

Yes.

(a) The seat belt system as well as the driver's seat;

(b) Both the seat belt system and the seat were inadequate in their design and manufacture so as to substantially contribute to plaintiff's injuries;

(c) Plaintiff objects to this subpart of this interrogatory. As asked it requires the plaintiff to do the work of the defendant, which was to design the subject

vehicle properly. Plaintiff is under no obligation to do so;

(d) Plaintiff is unaware of any such documentation at this time, however discovery and investigation are continuing.

Interrogatory No. 5:

In paragraph 20 of the complaint, you allege, among other things, that the vehicle which plaintiff was operating at the time of his accident, and each component thereof, "contained design and manufacturing defects." With respect to said allegation, do you contend that the subject vehicle or any component thereof contained any manufacturing defects? If so:

(a) Describe in detail each and every part or component of the subject vehicle which you contend contained a manufacturing defect;

(b) Describe in detail each error, if any, which you claim was made in the manufacture of any part or component of the subject vehicle;

(c) Describe in detail how each part or other component of the subject vehicle that you claim was defectively manufactured could have been manufactured better; and

(d) Identify all evidence, including each person and document, which you contend supports your contention, in whole or in part, that any part or component of the subject vehicle was defectively manufactured.

Response to Interrogatory No. 5:

(a) Refer to response to interrogatory no. 4(a) above.

(b) Refer to response to interrogatory no. 4(b) above.

(c) Refer to response to interrogatory no. 4(c) above.

(d) Refer to response to interrogatory no. 4(d) above.

Interrogatory No. 6:

If the subject vehicle was equipped with seat belts or shoulder harnesses or straps, state whether you were wearing the seat belts and/or shoulder harness at the time of the subject accident.

Response to Interrogatory No. 6:

I was wearing the only available lap seat belt at the time of this accident. There were no shoulder harnesses available.

Interrogatory No. 7:

Identify each person who you saw during the twenty-four (24) hour period prior to the accident, and twenty-four (24) hours thereafter.

Response to Interrogatory No. 7:

Charlene Bryant and Shawn Bryant, 133 West Vermont Avenue, Escondido, CA 92025; Tony Larson, driving supervisor, United Parcel Service, 111 North Bingham

Drive, San Marcos, Ca; and Andy Carrin, supervisor, United Parcel Service, address given above.

24 hours thereafter: same as above plus Dr. Hiskin, 161 Thunder Drive, Suit 112, Vista, CA.

Interrogatory No. 8:

With respect to any doctor you have seen as a result of injury you alleged to have received from the subject accident:

(a) Identify the name, address and telephone number of each doctor; and

(b) Describe all treatment or surgery each doctor recommended was or may be required and state how long any future treatment may be required.

Response to Interrogatory No. 8:

The information requested may be obtained from plaintiff's medical records listed which have already been supplied to the defendant:

Sharp Cabrillo Hospital, Tri-City Hospital, Dr. Richard Richley, Dr. David G. Freeman, Dr. John S. Kitchin, Dr. Arthur Varley, Dr. Eric Hiskin, North County Radiology Medical Group.

In addition, plaintiff underwent a fifth surgery at Sharp Cabrillo Hospital. Date of admission: May 23, 1984, date of release: June 2, 1984, which involved a lumbar fusion. Medical records have been ordered but not yet obtained. Plaintiff will supply defendant with these medical records upon receipt.

Interrogatory No. 9:

With respect to any injury or disability you suffered or any hospitalization of you prior to the subject accident:

- (a) Describe each such injury or hospitalization and the date(s) thereof; and
- (b) Identify the name, address and telephone number of each doctor who treated you for each injury or hospitalization.

Response to Interrogatory No. 9:

- (a) November, 1974, cyst removal, Mission Bay Hospital, 3030 Bunker Hill Street, San Diego, CA;
- (b) Dr. R. Sarver, 3737 Moraga Avenue, San Diego, CA.

Interrogatory No. 10:

With respect to any person not previously identified in your answers to these interrogatories, please identify the name and address of each and every doctor, chiropractor or therapist you have ever seen concerning any personal medical condition prior to the subject accident, including the date(s) thereof.

Response to Interrogatory No. 10:

Dr. E. Miles, 1947 Cable Street, Ocean Beach, CA.

Interrogatory No. 11:

If you have ever been involved, in any way, in any motor vehicle accidents, other than the subject accident,

identify the date and place of each said accident and each person involved in each said accident.

Response to Interrogatory No. 11:

August 16, 1980, near San Marcos, CA, along with Charlene Bryant; April, 1981, near Escondido, CA, again along with Charlene Bryant.

Interrogatory No. 12:

With respect to any indebtedness you have incurred to date for all medical services which you claim or as special damages for injuries suffered from the subject accident:

(a) State and itemize the amount of indebtedness; and

(b) Identify each person, other than yourself, who paid all or a part of such indebtedness.

Response to Interrogatory No. 12:

All medical bills available to the plaintiff at this time are attached hereto.

Interrogatory No. 13:

With respect to any claimed wage loss resulting from injuries sustained in the subject accident and the calculation thereof, please state:

(a) The amount claimed for past loss; and

(b) The amount claimed for future loss.

Response to Interrogatory No. 13:

(a) At the time of the subject accident, plaintiff was earning a starting salary of \$7.20 per hour, 40 hours per week. Thereafter, plaintiff was scheduled to earn approximately \$15.20 per hour after six months with U.P.S.;

(b) At the present time, plaintiff has not hired the services of an expert consultant to calculate the amount of future lost wages, and therefore is not in a position to accurately respond to this interrogatory. Discovery and investigation are continuing.

(Insurance Form deleted in printing)

(Medical Statements omitted in printing)

EXHIBIT D

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Attorneys for Defendant
Ford Motor Company

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

(Caption omitted in printing)

NO. 84-2049 PAR (Mex)

**ANSWERS AND OBJECTIONS OF
FORD MOTOR COMPANY TO INTERROGATORIES
PROPOUNDED BY PLAINTIFF**

**TO PLAINTIFF GARY BRYANT AND TO
HIS ATTORNEYS OF RECORD:**

Defendant Ford Motor Company ("Ford") hereby answers and objects to the interrogatories propounded by plaintiff Gary Bryant, without prejudice to subsequently discovered evidence as follows:

Preliminary Statement

Ford generally objects to the description of the "subject vehicle" in the definition section of plaintiff's interrogatories. The vehicle reportedly involved in plaintiff's alleged accident and apparently owned by United Parcel Service ("UPS") was inspected by representatives of Ford and plaintiff at a UPS service center in San Marcos, California on May 10, 1984. Although Ford has not yet obtained any title documents to confirm the identification of that vehicle, it is informed and believes that the UPS identification number and license number are consistent with the vehicle involved in plaintiff's alleged accident. However, the inspection failed to reveal any imprinted serial number on the chassis and the identification plate had been removed from the body. Ford is informed and believes that the vehicle identification number set forth in the definition section of plaintiff's interrogatories (P50BLD59493) is therefore based only upon records maintained by the California Department of Motor Vehicles and UPS, and not upon the vehicle itself. Ford's responses to the following interrogatories are therefore subject to such qualification concerning the identity of the vehicle.

Beyond any uncertainties associated with proper vehicle identification, Ford further objects to plaintiff's description of the "subject vehicle" as a "Ford truck." While Ford did design and assemble certain component

parts of the chassis of the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984, it had no involvement with the design, manufacture or assembly of the body of that vehicle. The inspection failed to reveal the identification of the manufacturer of the truck body due to the absence of any apparent identifying plate or label. However, Ford is informed and believes that such information can be obtained through records maintained by UPS.

INTERROGATORIES

Interrogatory No. 1:

Did you manufacture the subject vehicle or any component part thereof?

Response to Interrogatory No. 1:

Ford states that it designed and assembled certain component parts associated with the chassis of the vehicle that was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984. Based upon the vehicle identification number provided in plaintiff's interrogatories, the chassis was built at the Michigan Truck assembly plant in Wayne, Michigan in July 1968.

Interrogatory No. 2:

If your answer to Interrogatory No. 1, above, is in the affirmative, with respect to the manufacture of the subject vehicle, please answer the following:

(a) At what plant, in what geographical location, was the subject vehicle manufactured?

Response to Interrogatory No. 2:

Ford refers to its response to interrogatory no. 1.

Interrogatory No. 3:

State the true and correct name, address and telephone number (current) of each and every person, firm and/or corporation known to you that ever had possession of the subject vehicle from the time it was first sold by you to the present.

Response to Interrogatory No. 3:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain, and that it is overly broad, unduly burdensome and oppressive. Ford did not sell the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984. Ford has no reasonable or satisfactory means of determining who "ever had possession of the subject vehicle."

Interrogatory No. 4:

What is the specific model designation or number for the subject vehicle and/or its component parts?

Response to Interrogatory No. 4:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain, and that it is overly broad, unduly burdensome and oppressive. Ford has no reasonable or satisfactory means of identifying what is meant by the "specific model designation or number for the subject vehicle and/or its component parts."

Without waiving its objections, however, Ford states that the chassis of the vehicle reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984, is identified as P-500.

Interrogatory No. 5:

Have you ever or do you now hold any patents for any part of the subject vehicle or vehicles of the same model which part or parts have any safety value or safety function?

Response to Interrogatory No. 5:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain, and on the grounds that it is overly broad, unduly burdensome and oppressive. Ford has no reasonable or satisfactory means of determining what is meant by "part or parts [which] have any safety value or safety function."

Interrogatory No. 6:

Was the safety of the operator or user of the subject vehicle considered in the design and/or assembly and/or manufacture of the subject vehicle?

Response to Interrogatory No. 6:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain. Without waiving its objections, however, Ford states that it did not design, assemble or manufacture the body of the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984.

Interrogatory No. 7:

State the name, address and telephone number of all persons who participated in a supervisory way in the design, assembly and/or manufacture of the subject vehicle and its component parts.

Response to Interrogatory No. 7:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain, and that it is overly broad, unduly burdensome and oppressive. Ford has no reasonable or satisfactory means of identifying each and every individual who "participated in a supervisory way in the design, assembly and/or manufacture of the subject vehicle and its component parts." Without waiving its objections, however, Ford states that it did not design, assemble or manufacture the body of the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984.

Interrogatory No. 8:

State the name, current address and telephone number of the *current* chief of product design for your corporation or company.

Response to Interrogatory No. 8:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain, and that it seeks to elicit information which is wholly irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, however, Ford states that

it did not design the body of the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984.

Interrogatory No. 9:

Did you sell the subject vehicle? If so, please answer:

- (a) The date of the sale of the subject vehicle;
- (b) The name and address of the person from your corporation who represented your company or corporation in the sale;
- (c) State the name and address of the person who purchased the subject vehicle from your company or corporation;
- (d) State the date of shipment from your premises or from your possession to the purchaser of the subject vehicle.

Response to Interrogatory No. 9:

No.

Interrogatory No. 10:

State the name, current address and telephone number of all persons known to you who participated in the actual design of the subject vehicle and/or the actual design of any of the component parts of the subject vehicle which were intended to have a safety function or safety value with respect to the operator or user of the subject vehicle.

Response to Interrogatory No. 10:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain, and on the grounds that it overly broad, unduly burdensome and oppressive. Ford has no reasonable or satisfactory means of identifying "all persons known to you who participated in . . . the actual design of any of the component parts of the subject vehicle which were intended to have a safety function or safety value with respect to the operator or user of the subject vehicle."

Interrogatory No. 11:

Do you contend that you did not design the subject vehicle and/or any of its component parts?

Response to Interrogatory No. 11:

Ford contends that it did not design the body of the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984. Ford designed and assembled only certain component parts of the chassis of that vehicle.

Interrogatory No. 12:

Subsequent to the sale of the subject vehicle, have you at any time provided warning signs to be placed at or about any model of the subject vehicle, prototype, subsequent models or vehicles of the subject vehicle sold by you?

Response to Interrogatory No. 12:

Ford did not sell the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984.

Interrogatory No. 13:

Are you aware of any tests, whatsoever, having been made on any part of the subject vehicle or similarly equipped vehicles of the same model *which tests concern the safety of operators or users of those vehicles?*

Response to Interrogatory No. 13:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite and uncertain, and on the grounds that it is overly broad, unduly burdensome and oppressive. Ford has no reasonable or satisfactory means of determining what is meant by "tests, whatsoever, . . . which tests concern the safety of operators or users of those vehicles." Without waiving its objections, however, Ford states that it had no involvement with the design and assembly of the body of the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984.

Interrogatory No. 14:

Do you contend that the plaintiff was using the subject vehicle in a manner that was unforeseeable to you at the time of his injury?

Response to Interrogatory No. 14:

Ford does not have any information at the present time to contend that the plaintiff was using any vehicle in a manner which was unforeseeable at the time of his alleged accident. However, Ford states that its investigation concerning the accident, the proper identification of the "subject vehicle" and discovery into this action are continuing.

Interrogatory No. 15:

State the name, current address and telephone of the person answering these interrogatories, and state his or her professional resume.

Response to Interrogatory No. 15:

Ford states that the responses herein were prepared by its counsel. Ford also refers to the attached verification.

Interrogatory No. 16:

Have you conducted any investigation, whatsoever, concerning the subject incident? If so, please state the following:

(a) The name, current address and current phone number of the person conducting said investigation;

Response to Interrogatory No. 16:

Ford objects to this interrogatory on the grounds that it seeks to elicit information which is protected from disclosure by the work product doctrine and the attorney-client privilege. Without waiving its objections, however, Ford states that it retained the firm of Kurtz, Richards, Wilson & Co. to conduct a preliminary investigation concerning the facts and circumstances of this action.

Interrogatory No. 17:

State the original date of design and original date of manufacture of the subject vehicle.

Response to Interrogatory No. 17:

Ford states that it did not design or manufacture the body of the vehicle which reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984. However, it did design and assemble certain component parts of the chassis of that vehicle in July 1968.

Interrogatory No. 18:

Have you employed or consulted with anyone to make any tests or investigations to determine the cause of plaintiff's injury herein? If so, for each person, investigation or test, state:

(a) The name, address and telephone number of the laboratory or person conducting such investigation or test;

Response to Interrogatory No. 18:

Ford refers to its response to interrogatory no 16.

Interrogatory No. 19:

Are you protected by liability for the subject vehicle? If your answer is other than "no", state with respect to each such insurance policy:

(a) The number or numbers of the policy or policies, named insured or insureds, insurer or insurers, effective and expiration date or dates and limits of liability for each coverage;

Response to Interrogatory No. 19:

Ford does have a policy of insurance applicable to claims of this nature. Its self-retention, however, far ex-

ceeds any potential recovery in this action. Thus, for all practical purposes, Ford does not have liability insurance coverage applicable to this action.

Interrogatory No. 20:

Did you manufacture the seat belt, lap harness or any component part thereof which was a part of the subject vehicle at the time of this accident.

Response to Interrogatory No. 20:

No.

Interrogatory No. 21:

If your answer to the preceding interrogatory is anything other than in the affirmative, with respect to the manufacturer of the seat belt, lap harness or any component part thereof, please answer the following:

(a) In what year was the manufacture of the lap harness or seat belt completed;

(b) At what plant, and what geographical location was the subject seat belt or lap harness manufactured;

(c) State the names, address and telephone numbers of the person, firm or corporation to whom you first sold or consigned the seat belt or lap harness;

(d) State the date on which the manufacturer first sold or consigned the seat belt or lap harness and the date on which the manufacturer first shipped the seat belt or lap harness from their premises pursuant to sale or consignment.

Response to Interrogatory No. 21:

Ford objects to this interrogatory on the grounds that it is vague, ambiguous, indefinite, uncertain and unintelligible, and on the grounds that it is overly broad, unduly burdensome and oppressive. Ford has no reasonable or satisfactory means of determining the details concerning the "manufacturer of the seat belt, lap harness or any component part thereof" of the vehicle which was reportedly involved in plaintiff's alleged accident and inspected on May 10, 1984.

Dated: June 18, 1984.

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette

Richard A. Goette

Attorneys for Defendant
Ford Motor Company

V E R I F I C A T I O N

STATE OF MICHIGAN)
) SS:
COUNTY OF WAYNE)

ROBERT D. SANBORN, being duly sworn, deposes and says that he is an authorized agent of Ford Motor Company and that he verifies the foregoing Answers and Objections of Ford Motor Company to Interrogatories Propounded by Plaintiff for and on behalf of Ford Motor Company for and on behalf of Ford Motor Company; that the matters stated therein are not within the personal

knowledge of deponent; that the facts stated therein have been assembled by authorized employees and counsel of Ford Motor Company, and deponent is informed that the facts stated therein are true.

/s/ Robert D. Sanborn

(Jurat omitted in printing)

(Proof of Service omitted in printing)

HOWARD J. PRIVETT
RICHARD A. GOETTE
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600 Wilshire Boulevard
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(213) 624-2400

Attorneys for Defendant
Ford Motor Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

No. 84 2049 PAR (Mex)

STATEMENT OF UNCONTROVERTED FACTS
AND CONCLUSIONS OF LAW

(Lodged July 9, 1984)

DATE: August 20, 1984

TIME: 10:000 a.m.

FINDINGS OF FACT

1. Plaintiff is a California resident and former employee of United Parcel Service, Inc.

2. Ford Motor Company ("Ford") is incorporated under the laws of the State of Delaware with its principal place of business in the State of Michigan.

3. Ford has been and is principally engaged in the business of designing and assembling motor vehicles and some components thereof, including the P-500 chassis.

4. On March 1, 1983, plaintiff was involved in a single vehicle accident which occurred while he was driving a truck owned by his employer.

5. As a consequent of the accident on March 1, 1983, plaintiff sustained certain personal injuries due to the inadequacy of the seat belt system and driver's seat.

6. Ford did not design manufacture or assemble the seat belt system or driver's seat in the vehicle involved in plaintiff's accident and only designed and assembled certain component parts of the chassis of that vehicle.

7. All statements set forth below as conclusions of law, which might be deemed to be findings of fact, are incorporated herein by reference.

CONCLUSIONS OF LAW

1. All statements set forth above as findings of fact, which might be deemed to be conclusions of law, are incorporated herein by this reference.

2. This Court has jurisdiction under 28 U.S.C. 1332, and the amount in controversy exceeds the value of \$10,000, exclusive of interest and costs.

3. There is no genuine issue of material fact which would support the plaintiff's negligence claim in the first cause of action in the complaint herein which shall be dismissed as a matter of law.

4. There is no genuine issue of material fact which would support the plaintiff's breach of warranty claim in the second cause of action in the complaint herein which shall be dismissed as a matter of law.

5. There is no genuine issue of material fact which would support the plaintiff's strict liability claim in the third cause of action in the complaint herein which shall be dismissed as a matter of law.

6. Ford is entitled to summary adjudication of the issues and dismissal of the first, second and third causes of action.

Dismissal of these causes of action and this case shall be entered accordingly.

Dated: August —, 1984.

Pamela A. Rymer
United States District Judge

Presented By:

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK, VERLEGER & SHEA

By /s/ Richard A. Goette
Richard A. Goette

Attorneys for Defendant
Ford Motor Company

(Proof of service omitted in printing)

Law Offices of
GREENE, O'REILLY, AGNEW & BROILLET
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(213) 482-1122
(213) 482-1350

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

STATEMENT OF GENUINE ISSUES PURSUANT TO
U.S. DISTRICT COURT RULE 7.14.2

Date: August 20, 1984

Time: 10:00 a.m.

Plaintiff submits this Statement of Genuine Issues in response to defendant's motion for summary judgment dated July 9, 1984, pursuant to *U.S. District Court Local Rule 7.14.2*.

Plaintiff's Issue: Insufficient documentation or other facts exist at this time to determine Ford's involvement with regard to the following:

(a) Whether design specifications were provided by Ford to subsequent purchasers of the vehicle chassis for implementation of the design of the complete vehicle including defective seat and seat restraint system;

(b) Whether subsequent purchasers of the vehicle chassis consulted Ford regarding implementation of the defective seat and/or seat restraint system and what design input Ford provided to them;

(c) Whether Ford provided plans, diagrams, blueprints, etc., to subsequent purchasers of the vehicle chassis providing the foundation or basic design principles of the seats and/or seat restraint systems to be used with the subject chassis;

(d) Whether Ford engaged in a cooperative venture with other designers of component parts to be used with the subject chassis, including but not limited to the defective seat and seat restraint system.

Lack of facts in this instance in and of itself creates an issue of material fact in that plaintiff is unable to determine at this time *all* liable parties in this action or the extent of Ford's liability. Ford's policy dictates that records and documentation pertaining to their vehicles be destroyed after ten years. As such, plaintiff has conducted substantial discovery and investigation to determine the parties liable for plaintiff's injuries. In doing so plaintiff has determined the names of additional potential defendants who plaintiff intends to bring into this lawsuit at the proper time. Until then, plaintiff is unable to determine the exact extent of Ford's liability in this matter.

DATED: August 6, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

(Proof of service omitted in printing)

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

PLAINTIFF'S OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF
TIMOTHY J. WHEELER

(Filed August 10, 1984)

Date: August 20, 1984

Time: 10:00 a.m.

TO ALL PARTIES HEREIN AND TO THEIR
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 10:00 a.m. on August 20, 1984, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Pamela A. Rymer, United States District Judge, 312 North Spring Street, Los Angeles, California 90012, plaintiff, GARY BRYANT, will oppose defendant's, FORD MOTOR COMPANY, motion for summary judgment and summary adjudication of issues pursuant to the provisions of Rule 56(d) of the *Federal Rules of Civil Procedure* and the *United States District Court Local Rules 7.14.2.*

Plaintiff's opposition will be based on the grounds that there is still substantial controversy with regard to issues of material fact existing as to defendant, FORD MOTOR COMPANY.

Said opposition will further be based upon the attached memorandum of points and authorities, the declaration of Timothy J. Wheeler, separate "statement of genuine issues," and all papers already on file in this matter, as well as any oral argument which may be presented at the time of the hearing of this motion.

DATED: August 6, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

This case arises out of a single vehicle accident which occurred on or about March 1, 1983. As a result of this accident, plaintiff sustained severe and permanent bodily injury making it necessary for the plaintiff to undergo five back surgeries since the date of this accident. Based on information and belief, plaintiff filed his complaint in this matter on January 27, 1984, in Los Angeles County Superior Court against the sole defendant, FORD MOTOR COMPANY, a corporation. Said defendant is being prosecuted on theories of negligence, strict liability and breach

of warranty. Based on information and belief, plaintiff contends that his injuries could have been prevented or minimized by the implementation of a more properly designed and manufactured driver's seat and/or seat restraint system. Based on information and belief that the United Parcel Service van involved in this accident was manufactured by FORD MOTOR COMPANY, plaintiff filed its complaint against Ford and thereafter commenced discovery.

At the present time, defendant, FORD MOTOR COMPANY, is attempting to obtain summary judgment on the grounds that:

(a) Ford manufactured only the chassis of the subject vehicle;

(b) Ford had no involvement with the manufacture of the body of the subject vehicle or the restraint system implemented therein;

(c) Ford had no involvement with the manufacture of the body of the subject vehicle or the driver's seat implemented therein;

(d) Ford cannot be held liable under theories of negligence, strict liability or breach of warranty for a defective product and its component parts which it did not design or manufacture.

It is the contention of the plaintiff at this time that there is insufficient documentation or information available to the plaintiff to make an accurate determination as to the degree of involvement of Ford in the design, manufacture and/or implementation of the seating system

as well as the seat restraint system found in the subject vehicle at the time of this accident.

FORD MOTOR COMPANY has responded to plaintiff's interrogatories in part as follows.

(a) Ford designed and manufactured only the "chassis" of the subject vehicle.

(b) Ford did not design the body of the subject vehicle or any of its component parts other than those component parts of the chassis of the subject vehicle.

(c) Ford did not design or manufacture the seat or any part of the seat restraint system found in the subject vehicle at the time of the accident and has no information as to who did design or manufacture these component parts.

(Copies of defendant's responses to plaintiff's interrogatories are attached hereto as Exhibit "A".)

In furtherance of its responses to plaintiff's interrogatories, defendant, by correspondence dated June 29, 1984, informed the plaintiff that Ford does not retain its vehicle records beyond ten years, and therefore could not determine who purchased the chassis from Ford and then manufactured and assembled the finished vehicle. (A copy of defendant's letter is attached hereto as Exhibit "B".)

Due to the fact that Ford has destroyed its records with regard to the subject chassis, and has not provided any documentation to the plaintiff which would substantiate that it *did not* have any involvement in the design or manufacture of the seating system or the seat restraint system, plaintiff has been left with no alternative but to conduct

discovery to determine who in fact did take part in the design, manufacture and implementation of the defective component parts. Until such time as plaintiff is able to ascertain through other parties the exact involvement of FORD MOTOR COMPANY with regard to the defective component parts, it is premature to allow defendant, FORD MOTOR COMPANY, relief by summary judgment as such relief would be extremely prejudicial to the plaintiff as well as other potential defendants in this lawsuit.

Based upon information provided to the plaintiff by attorneys for United Parcel Service, plaintiff has ascertained that the subject vehicle is a 1968 Ford U.P.S. vehicle. (Please refer to Exhibit "C".) In a letter dated July 9, 1984, and attached hereto as Exhibit "D", attorneys for U.P.S. have informed us that the vehicle was purchased by them from City Ford Company in Los Angeles, CA, on or about May 31, 1968. Other discovery and investigation have informed the plaintiff that the seating system implemented in the subject vehicle was manufactured by General Seating and Sash Company of Tompton, Pennsylvania. The same discovery and investigation *has not* yet provided the plaintiff with information or documentation to determine the designer or manufacturer of the seat restraint system implemented in the subject vehicle.

Based upon its investigation, plaintiff suspects that the seat restraint system was manufactured by a California corporation based in Pacoima, California, and that the body of the subject vehicle was designed and manufactured by Grumman, another California corporation. However, at this point in time, neither Ford or U.P.S. has

been able to provide the plaintiff with sufficient documentation to inform the plaintiff as to the parties responsible for the decision to implement the defective seat and seat restraint system into the subject vehicle. Further discovery must be conducted against each of the parties named above. Plaintiff has not as yet named any of the above-mentioned parties in this lawsuit and has not done so as discovery and investigation are continuing. After sufficient discovery and investigation have been conducted, plaintiff intends to name City Ford, Grumman, General Seating and Sash Company, as well as the seat restraint system designer and manufacturer.

Based upon plaintiff's "Statement of Genuine Issues," it is clear that there is a substantial number of issues to be determined as well as facts to be determined before defendant, FORD MOTOR COMPANY, can be exonerated from liability for plaintiff's injuries. The above-named potential defendants may or may not have records on file which will inform the plaintiff as to the name of those persons or entities responsible for implementing, designing and manufacturing the defective seat and seat restraint system into the subject vehicle. Ford, as the manufacturer of the chassis, laid the foundation and provided basic design principles for the subject vehicle in its entirety. It is possible that Ford provided design specifications and/or consultation to subsequent purchasers of their chassis for implementation of the seats and seat restraint system.

Until such time as plaintiff has had time to conduct further discovery and investigation, particularly as against the abovenamed potential defendants, and in lieu of the fact that defendant, FORD MOTOR COMPANY, as well

as U.P.S. have been unable to provide plaintiff with critical information and documentation which would substantiate Ford's claim that it had no other involvement other than the design and manufacture of the chassis of the subject vehicle, it is far too premature to grant defendant's motion for summary judgment and summary adjudication of the issues. Plaintiff intends, at the appropriate time, to make its motion to remand this matter to the Superior Court of California, naming California defendants, City Ford Company and Grumman, if future discovery and investigation in fact reveal that these parties are viable defendants in this matter.

As the only showing which the plaintiff is required to make at this time is that some triable issue of fact exists as to the plaintiff's complaint in this action, the plaintiff has gone well beyond his burden of showing, by clear and convincing evidence, that as a result of the discovery and investigation conducted up to the present time, that there are several issues of material fact yet to be determined in this matter, thereby precluding the defendant's motion for summary judgment at this time. The following points and authorities are clear that in the case of doubt a summary judgment must be denied.

II

A MOTION FOR SUMMARY JUDGMENT SHALL BE GRANTED ONLY IF ALL THE PAPERS SHOW THAT THERE IS NO TRIABLE ISSUE AS TO ANY MATERIAL FACT THAT THE MOVING PARTY IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW.
C.C.P. § 437(c)

III

PAPERS FILED IN OPPOSITION TO A MOTION FOR SUMMARY JUDGMENT ARE TO BE CONSTRUED LIBERALLY, WHEREAS PAPERS FILED IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT ARE TO BE STRICTLY CONSTRUED. *Pupko v. Bank of America*, (1981) 114 Cal. App. 3d 495; 170 Cal. Rptr. 615; *Calva v. Security Pacific Bank*, (1980) 111 Cal. App. 3d 409; 168 Cal. Rptr. 582

In a leading case on the propriety of the summary judgment procedure, *Stationers Corporation v. Dunn and Bradstreet, Inc.*, 62 Cal.2d 412 (1965), the California Supreme Court stated:

“Summary judgment is proper only if the affidavits in support of the moving party would be sufficient to sustain a judgment in his favor, and his opponent does not by affidavit show such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue. The aim of the procedure is to discover, through the media of affidavits, whether the parties possess evidence requiring the weighing procedure of a trial. In examining the sufficiency of affidavits filed in connection with the motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. Such summary procedure is drastic and should be used with caution so that it does not become a substitute for the ~~open~~ trial method of determining facts.”

In the case of *Collins v. City and County of San Francisco*, 50 Cal.App.3d 671 (1975), the court stated:

“In resolving the question on defendant’s motion for summary judgment, whether there are any factual is-

sues to be tried, the superior court is obliged to construe the defendant's affidavit strictly and those of the plaintiff liberally to the end that the latter not be summarily deprived of the full hearing which he is due at the trial of this case."

IV

MOVING PARTY'S PAPERS ARE TO BE STRICTLY CONSTRUED AND IN THE CASE OF DOUBT SUMMARY JUDGMENT MOTION SHOULD BE DENIED. *Sesma v. Cueto*, (1982) 129 Cal. App. 3d 108; 181 Cal. Rptr. 12

V

ANY DOUBT AS TO THE PROPRIETY OF A MOTION FOR SUMMARY JUDGMENT SHOULD BE RESOLVED IN FAVOR OF THE OPPOSING PARTY. *Wefiero v. American Employers Insurance Company*, 5 Cal. App. 3d 799 (1970); *Joslin v. Marin Municipal Water District*, 67 Cal. 2d 132

VI

EVIDENCE IN SUPPORT OF SUMMARY JUDGMENT MAY INCLUDE INFERENCES REASONABLY DEDUCIBLE FROM PAPERS SUBMITTED UNLESS THEY ARE CONTRADICTED BY OTHER INFERENCES WHICH RAISE A TRIABLE ISSUE OF FACT. *C.C.P.* § 437(c); *Burke v. Superior Court of Sacramento County*, (1982) 180 Cal. Rptr. 537; 128 Cal. App. 3d 661

As such, plaintiff respectfully requests that the court deny defendant's motion for summary judgment and summary adjudication of the issues in its entirety, at least until such time as the plaintiff can adequately and accurately determine, by and through the aforementioned

potential defendants, the extent of involvement of defendant, FORD MOTOR COMPANY, in the design, manufacture or decision to implement the particular seat and/or seat restraint system found in the subject vehicle. As the complaint in this action was filed only six months ago, plaintiff is still in the early stages of discovery. In an effort to determine the truly liable parties in this action plaintiff needs additional time before proceeding further with this lawsuit. To allow the plaintiff to conduct additional discovery before naming the above-mentioned potential defendants and thereafter conducting further discovery against these parties to determine their involvement as well as the involvement of FORD MOTOR COMPANY with regard to the defective component parts, is fair and just and not prejudicial to the defendant, FORD MOTOR COMPANY, at this time.

DATED: August 6, 1984

Respectfully submitted,
GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

DECLARATION OF TIMOTHY J. WHEELER

I, Timothy J. Wheeler, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California and am a member of the law firm of Greene, O'Reilly, Agnew & Broillet, attorneys of record for the plaintiff herein.

I am the attorney at said law firm principally responsible for the handling of the case of *Gary Bryant v. Ford Motor Company, a corporation*, and as such I am familiar with the matters involved in this case.

This accident arises out of a single vehicle accident which occurred on March 1, 1983. As a result of this accident, plaintiff has suffered severe and permanent personal injuries. As a result of the implementation of an improperly designed and manufactured seat and seat restraining system into the subject vehicle, the plaintiff sustained bodily injuries necessitating five major surgeries, rendering him permanently and totally disabled.

At the present time, defendant, FORD MOTOR COMPANY, is attempting to obtain summary judgment on the grounds that

(a) Ford manufactured only the chassis of the subject vehicle;

(b) Ford has no involvement with the manufacture of the body of the subject vehicle or the restraint system implemented therein;

(c) Ford had no involvement with the manufacture of the body of the subject vehicle or the driver's seat implemented therein;

(d) Ford cannot be held liable under theories of negligence, strict liability or breach of warranty for a defective product and its component parts which it did not design or manufacture.

As previously stated in plaintiff's memorandum of points and authorities, substantial controversy as to sev-

eral issues of material fact exist as to FORD MOTOR COMPANY and their involvement in the design, manufacture and/or implementation of the defective seat and/or seat restraint system.

As the designer and manufacturer of the chassis of the subject vehicle, it has yet to be determined whether or not Ford provided consultation or design specifications to subsequent purchasers of the chassis for the implementation of not only the seat and seat restraint system but also other component parts. Until such time as plaintiff is adequately able to determine the proper additional defendants in this lawsuit, plaintiff is unable to determine the exact extent of Ford's liability in this lawsuit. Based upon plaintiff's own discovery and investigation, plaintiff has determined that there are other viable entities to be brought into this matter, and until such time as these parties have been served and provide plaintiff with information and documentation, will plaintiff be able to determine the exact extent of FORD MOTOR COMPANY's liability in this action. Ford has been unable to provide plaintiff with the necessary documentation to exonerate itself. As stated in its responses to plaintiff's interrogatories, Ford destroyed all documentation with regard to the subject chassis in 1978. The only documentation which this defendant relies on to exonerate itself of liability in this action is the declaration of its own designer, James I. Scott.

This declarant has actively pursued discovery and investigation in this matter since before the complaint in this action was even filed. FORD MOTOR COMPANY has been very cooperative to date, however has been un-

able to provide plaintiff with the information necessary to determine the exact extent of Ford's involvement in this matter. Plaintiff's employer, United Parcel Service, has also been cooperative in supplying records and information with regard to the plaintiff as well as the identification of the subject vehicle. However, U.P.S. has not provided information which would inform the plaintiff as to the installation of the seat and/or seat restraining system. Apparently, this information will have to be determined from other sources, including but not limited to City Ford Company, General Seat and Sash Company and Grumman. At the present time, plaintiff intends to make its motion to remand this matter to the Superior Court of California as documentation and information in plaintiff's possession indicates that City Ford Company and Grumman, both California-based corporations, are partially liable for injuries sustained by the plaintiff as a result of this accident.

Until such time as these potential defendants are able to respond to plaintiff's complaint as well as plaintiff's discovery will anyone be able to determine the exact extent of Ford's liability in this matter.

As such, the plaintiff respectfully requests that the court deny defendant's motion for summary judgment and summary adjudication of issues in its entirety, and that the defendant take nothing thereby.

DATED: August 6, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Declarant

EXHIBIT "A"

[Answers and Objections of Ford Motor Company to
Interrogatories Propounded by Plaintiff,
see at pp. 71-84.]

EXHIBIT "B"

McCUTCHEN, BLACK, VERLEGER & SHEA
COUNSELORS AT LAW
600 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 624-2400

TELEX: 698261

June 29, 1984

(Received July 2, 1984)

Timothy J. Wheeler, Esquire
Greene, O'Reilly, Agnew & Broillet
1122 Wilshire Boulevard
Los Angeles, California 90017-1993

Re: *Bryant v. Ford Motor Company*

Dear Mr. Wheeler:

This will serve to respond to your letter of June 21 regarding the answers and objections of Ford Motor Company to plaintiff's first set of interrogatories.

As a preliminary matter, we believe that all objections are well taken. Each particular objection was interposed in good faith based upon the nature of the underlying interrogatory. Many interrogatories in our judgment are ambiguous, susceptible to different interpretations, unreasonably burdensome and/or request information which is irrelevant to this lawsuit. To the extent there was some reasonable basis for providing an answer to an objectionable question, we prepared a response based upon our understanding of the interrogatory. While reasonable minds may differ as to clarity and scope of interrogatories, we find no basis for the withdrawal of any objection.

Although we will fully cooperate in attempting to resolve your apparent dissatisfaction with the answers, the responses are in our view entirely adequate. In many instances, you are seeking information which was either not requested or is simply not available from Ford. Interrogatory no. 3, for example, asks who was ever in possession of the subject vehicle from the time it was sold by Ford to the present. Although you apparently concede that Ford did not sell the vehicle and would not know the identity of the vehicle owners, it is now claimed that the interrogatory should be interpreted to include only the purchaser of the chassis. While that is not the question, we would explain that Ford does not retain such vehicle records beyond ten years and therefore cannot determine who purchased the chassis and then manufactured and assembled the finished vehicle. We suggest that the seller of the vehicle can most reasonably be ascertained from the reported purchaser, United Parcel Service.

Your difficulty with our response to interrogatory no. 4 raises a similar problem. Since Ford did not design, manufacture or assemble the subject vehicle after it sold the chassis, it has no direct knowledge concerning its particular identification. Again, such information can best be determined from UPS or the manufacturer of the vehicle. Although we attempted to confirm the serial number normally imprinted on the chassis at the preliminary inspection on May 10, that number was not detectable without disassembling the vehicle. Ford's only direct information concerning the identity of any component related to the subject chassis is the general series number which, as explained in our interrogatory response, is P-500.

Despite your assertion that interrogatory no. 5 is "clear and concise," the question remains objectionable. Plaintiff has not provided any definition of the terms "safety value or safety function" and they are susceptible to a wide range of meanings. To suggest that "perhaps a design engineer" would understand the terms is at best speculative. Several other interrogatories raise the same problem. *See, e.g.*, interrogatory no. 6 ("safety of the operator"), no. 10 ("component parts . . . which were in-

tended to have a safety function or safety value'') and no. 13 ('tests [which] concern the safety of operators or users').

Beyond any problem encountered in attempting to define safety and assuming that Ford was involved only with the design and assembly of certain component parts of the chassis, interrogatory no. 5 also lacks any focus or specificity as to which particular components form the subject matter of this action. We do not believe that Ford should be required to analyze each and every chassis component to determine its possible "safety function" and then determine whether there are any patents covering such components. To attempt to include the entirety of the chassis is impermissible, particularly in view of plaintiff's liability theories which are focused only on the restraint system and driver's seat. Such questions appear more appropriately addressed to the manufacturer of the finished vehicle.

In addition to the problem of interrogatory no. 7 again focusing upon the "subject vehicle," we believe that the question is patently overbroad by requesting the identity of each person who may have "participated in a supervisory way in the design, assembly and/or manufacture" of the chassis. Other questions are similarly overbroad. *See, e.g.*, interrogatory no. 10 ("all persons . . . who participated in the actual design of . . . any of the component parts of the subject vehicle."). Beyond the burden that plaintiff is attempting to impose and despite the fact that it may in any event be impossible to reconstruct the identity of such individuals who were employed at the Michigan truck assembly plant in 1968, the question is wholly inconsistent with plaintiff's liability theories. As stated in response to interrogatory no. 20, Ford was not involved with the manufacture of the restraint system.

The information requested by interrogatory no. 8 ("current chief of product design") is meaningless unless plaintiff specifies the particular area of automotive design. The interrogatory also fails to specify which component is encompassed by the question. Moreover, even if plaintiff

limited the inquiry to the chassis, how is such information "very relevant" to this action? Ford did not design, manufacture or assemble the body of the subject vehicle, including the restraint system or driver's seat. This is again an area of inquiry which appears more appropriate for the designer and manufacturer of the finished vehicle.

Interrogatory no. 12 improperly assumes that Ford sold the subject vehicle. It did not. You are asking Ford to make a clearly erroneous assumption and then provide an answer. The answer is entirely responsive to the question. As with other interrogatories and based upon plaintiff's liability theories, this question appears better designed for the manufacturer and seller of the finished vehicle.

I appreciate your willingness to cooperate in attempting to resolve the matter. If you would care to further explore the subject, please contact me to schedule a meeting pursuant to local rule 7.15.

Very truly yours,

Richard A. Goette
of McCUTCHEN, BLACK, VERLEGER & SHEA

EXHIBIT "C"

WELLS & BARBER
LAWYERS

1600 North Broadway Suite 601
Santa Ana, California 92706
(714) 667-0201

Virgil R. Wells
Donald W. Barber
W. Walter Livingston
Victor A. Schulte
J. Norman Thibault
Kurt A. Stiefler

Los Angeles County Office:
1540 Wilshire Boulevard
Los Angeles, Ca. 90017
(213) 483-7491

May 23, 1984

GREENE, O'REILLY, AGNEW & BROILLET
1122 Wilshire Boulevard
Los Angeles, California 90017-1993

Attention: Timothy J. Wheeler, Esq.

RE: GARY BRYANT v. UNITED PARCEL
SERVICE
WCAB CASE NO.: 83 SD 78244

Dear Mr. Wheeler:

Pursuant to our earlier discussions, we are enclosing the repair history record of the subject United Parcel vehicle.

It is our understanding that the informal inspection went forward as arranged May 10, 1984 in San Marcos. The vehicle description has been confirmed as follows:

California License Number 1P09925;

I.D. # P50BLD59493

Vehicle Type 1968 Ford U.P.S. Car No. 13603

We are seeking any available additional documentation, such as title documents, purchase records and records of specifications and installers (particularly regarding the seat restraints).

We will advise of our progress with respect to this informal discovery. Thank you for your courtesy and cooperation.

Sincerely,

/s/ J.N. THIBAUT

J.N. THIBAUT

JNT/sr

Enclosure

cc: McCUTCHEN, BLACK, VERIEGER & SHEA
600 Wilshire Blvd., 10th Floor
Los Angeles, California 90017

EXHIBIT "D"

WELLS & BARBER
LAWYERS

1600 North Broadway Suite 601
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Los Angeles, Ca. 90017
(213) 483-7491

July 9, 1984

Timothy J. Wheeler, Esq.
GREENE, O'REILLY, AGNEW & BROILLET
1122 Wilshire Boulevard
Los Angeles, California 90017-1993

RE: GARY BRYANT v. FORD MOTOR COMPANY

Dear Mr. Wheeler:

We had inquiries pending regarding the information requested in your letter of July 2.

Enclosed are the detailed specifications regarding the subject vehicle. Some of the documentation in connection with purchase was turned over to the DMV at the time of registration, and destroyed by them after four years.

You will note these materials indicate the subject vehicle was purchased from the City Ford Company in Los Angeles on or about May 31, 1968. Perhaps additional documentation regarding manufacturers and sub-installers is in their records.

Sincerely,

/s/ J.N. THIBAUT

J.N. THIBAUT

JNT/sr

CC: McCUTCHEN, BLACK, VERIEGER & SHEA

(Proof of service omitted in printing)

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK, VERLEGER & SHEA
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400

Attorneys for Defendant
Ford Motor Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(Caption omitted in printing)

No. 84 2049 PAR (Mex)

Date: August 20, 1984

Time: 10:00 a.m.

REPLY MEMORANDUM OF
FORD MOTOR COMPANY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT
AND SUMMARY ADJUDICATION OF ISSUES

(Filed August 15, 1984)

I. PRELIMINARY STATEMENT

Plaintiff's belated opposition to the pending motion for summary judgment entirely fails to adequately or directly address the evidence presented by Ford Motor Company. Plaintiff seeks only to disguise the frailty of his claims against Ford by struggling to create triable issues of fact. There are none. There is no factual or legal basis for the claims against Ford and none of the evidence is disturbed or indeed even considered by plaintiff.

Instead, plaintiff's brief extends an invitation for this Court to delve into issues concerning, among other things, the anticipated discovery of nonexistent documents, the

joinder of parties other than Ford who may be responsible for plaintiff's injuries and a threatened attempt to remand this action to state court based upon the addition of possibly nondiverse parties. At best, plaintiff's invitation to explore these irrelevant issues is a diversionary tactic. By failing to address either the pertinent facts or the applicable law, plaintiff simply concedes the pending motion. There is a single pivotal issue here raised—should Ford be held legally accountable for plaintiff's injuries? Plaintiff's opposition fails to address that question and simply serves to confirm that the answer is "no."

The inescapable fact remains that there is no evidence in this action to remotely support plaintiff's claims against Ford. The facts and law are conclusively aligned against plaintiff and there is no rational reason not to grant the motion for summary judgment.

II. THIS COURT MUST ENTER SUMMARY JUDGMENT IN FAVOR OF FORD

A. *Plaintiff Concedes Ford's Motion by Failing to Controvert the Facts*

Ford's motion set forth sufficient evidence to require summary judgment on each of plaintiff's claims for relief premised upon negligence, breach of warranty and strict liability. Plaintiff attempts to escape this conclusion by advancing unsupported allegations as to what additional evidence may somehow establish concerning Ford's possible involvement in plaintiff's accident. Plaintiff then contends that it is "premature" to grant Ford's motion. (Opp. mem. p. 5.) The evidence, however, remains uncontroverted and shows the following:

1) The plaintiff is contending that he was injured in a single vehicle accident involving a 1968 truck owned by his employer, United Parcel Service, on March 1, 1983. Plaintiff claims that his injuries were caused directly and only by a defectively designed seat belt system and driver's seat in that vehicle.

2) Ford designed and manufactured *only* certain component parts associated with the chassis of the subject vehicle. That chassis has been identified as one of the P-500 series which Ford built between the late 1940's and 1979. Ford had no involvement whatsoever with the seat belt system or driver's seat in the completed vehicle.

3) Ford never provided any seat belt system or seat with any P-500 chassis and in fact relied entirely upon the manufacturer of the completed vehicle to select and install the type of vehicle body and interior, including the seat belt system and driver's seat.

Plaintiff's opposition attempts only to confuse this uncontested evidence. It is claimed, for example, that by designing the chassis, Ford somehow "provided the basic design principles for the subject vehicle in its entirety." (Opp. Mem., p. 7.) Beyond being demonstrated plainly wrong by the evidence, plaintiff relies upon that erroneous assertion to remarkably argue that "[i]t is *possible* that Ford provided design specifications and/or consultation to subsequent purchasers of their chassis for implementation of the seats and seat restraint system." (*Id.*, emphasis added.) Plaintiff's fanciful speculation is wholly unsupported by any evidence. To the contrary, the unchallenged affidavit of James I. Scott directly refutes plaintiff's hypothesis by explaining that Ford "never

designed, manufactured or assembled seats or seat belt systems for the P-500 chassis" (Scott affidavit, ¶ 8) and relied "entirely" upon the manufacturer of the completed vehicle. (Scott affidavit, ¶ 9.)

Since plaintiff's opposition fails to offer even one scrap of evidence on any point, the uncontradicted facts must be taken as true and Ford's motion must be granted. It is black letter law that a party cannot rely on bare allegations or unsupported assertions to refute a factual showing on summary judgment. *See Fed. R. Civ. Pro. 56(e)*. As the Ninth Circuit stated in *Turner v. Local Union No. 302*, 604 F.2d 1219 (9th Cir. 1979):

"When a movant submits an adequately supported motion for summary judgment, 'the burden of proof falls to the opposing party, *who must come forward with facts, and not allegations*, to controvert the moving party's case.' 'It is his duty to expose the existence of a genuine issue which will prevent the trial from being a useless formality.'"

Id. at 1228 (emphasis added; citations omitted).

Accord, THI-Hawaii v. First Commerce Financial Corp., 627 F.2d 991, 994 (9th Cir. 1980) ("Once the moving party has met the initial burden of going forward, the opposing party may not defeat summary judgment in the absence of any significant probative evidence tending to support his or her theory"); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 950-51 (9th Cir. 1978).

Plaintiff has failed to meet his burden to introduce facts upon which the pending motion should or could be denied.

B. Plaintiff's Discussion of "Issues" is Wholly Irrelevant

The only matters which plaintiff does discuss in his opposition brief often have little to do with the pending motion. Plaintiff persists in outlining his contentions relating to the merits of this action and the possible involvement of Ford without addressing the evidence. The basic contention contained in plaintiff's opposition is illuminating.

"It is the contention of the plaintiff at this time that there is insufficient documentation or information available to the plaintiff to make an accurate determination as to the degree of involvement of Ford in the design, manufacture and/or implementation of the seating system as well as the seat restraint system found in the subject vehicle at the time of the accident."

(Opp. Mem. p. 4.)

This contention has been rendered utterly meaningless by the pending motion.

As a preliminary matter, Ford has clearly established that it maintains no vehicle records beyond ten years. (Scott affidavit, ¶ 13.) While one may question how any records maintained by Ford could be useful to plaintiff in this action, the uncontradicted record substantiates that no relevant information is in the possession or control of Ford. Plaintiff has moreover failed to show what "documentation or information" could conceivably be in the possession of Ford that could affect this motion. There is most certainly no information which could implicate Ford in the design or assembly of the vehicle components which plaintiff claims are defective.

We reiterate that the unchallenged affidavit of Mr. Scott unambiguously explains that Ford never designed, manufactured or assembled any seat belt system or seats for this particular type of chassis. (Scott affidavit, ¶ 8.) Ford provided only the incomplete chassis unit; the builder of the completed vehicle was responsible for the selections and installation of such equipment. Such decisions are in fact exclusively within the control of the chassis purchaser who decides upon the type of vehicle body and interior. (Scott affidavit, ¶ 8.) While plaintiff may somehow believe that other "documentation" is necessary to exonerate Ford, the affidavit supporting Ford's motion is more than sufficient to demonstrate that plaintiff has failed to establish any genuine issue.

In realizing that the evidence cannot be contradicted, plaintiff next attempts to demonstrate that some other entity may be responsible for plaintiff's injuries. It is asserted, for example, that a Pennsylvania corporation may have implemented the seating system. (Opp. mem., p. 5.) Plaintiff then states that he "suspects" that the seat restraint system and the vehicle body were manufactured by California corporations. (Opp. mem., p. 6.) Plaintiff concedes that he has not named these entities in this action but suggests that his failure to do so is somehow relevant to Ford's motion. It is not. Plaintiff's problematic addition of these parties and the threatened attempt to remand this action to state court are irrelevant and should not be considered by this Court.

These separate matters do not and cannot have any bearing upon the evidence supporting Ford's motion. As explained below, if plaintiff is attempting to create issues

to justify a request for additional time, such an attempt is unavailing.

C. There is No Justification for Further Discovery by Plaintiff to Delay the Granting of Ford's Motion

In a last plea to avoid the granting of Ford's motion, plaintiff argues that he "has been left with no alternative but to conduct discovery to determine who in fact did take part in the design, manufacture and implementation of the defective component parts." (Opp. Mem. p. 5.) He then concludes that it is "far too premature" to grant the motion. (Opp. Mem. p. 7.) This contention is no basis for denying Ford's motion and plaintiff's anticipated course of action is immaterial.

While it is sometimes difficult to understand the grounds for plaintiff's opposition, it appears that he is requesting further discovery under Rule 56(f) of the Federal Rules of Civil Procedure. However, that rule does not provide any legitimate reason for the denial of Ford's motion. The nature of plaintiff's burden under that rule was adequately explained in *Willmar Poultry Co. v. Morton-Norwich Products Inc.*, 520 F.2d 289 (8th Cir. 1975), *cert. denied* 424 U.S. 915 (1976).

"Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith in affirmatively demonstrating why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the mov-

ant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified."

520 F.2d at 297 (citations omitted).

Plaintiff here has similarly failed to show how any delay could possibly support a claim against Ford.

Plaintiff moreover does not offer any explanation as to why any further discovery should affect Ford's motion. Discovery of nonexistent records from Ford cannot alter plaintiff's own contentions or the established fact that Ford has no responsibility for plaintiff's injuries. See *Simons v. Amerado Hess Corp.*, 619 F.2d 440, 442 (5th Cir. 1980) ("Since defendant . . . was entitled to judgment as a matter of law based upon undisputed facts developed at least in part from plaintiff's own deposition, the argument that summary judgment was premature because plaintiff had no opportunity to complete his discovery must fail."); *Lamb's Patio Theatre v. Universal Film Exchanges*, 582 F.2d 1068, 1071 (7th Cir. 1978) ("[Plaintiff] also contends that under Rule 56(f) of the Federal Rules of Civil Procedure, summary judgment should not have been entered because it prevented [plaintiff] from pursuing additional discovery. We find this contention to be devoid of merit."). Finally, plaintiff's failure to even move for a continuance under Rule 56(f) prevents him from complaining of the timing of this motion. See *THI-Hawaii v. First Commerce Financial Corp.*, *supra.*, at 994.

The proceedings in this case during the past several months have been expensive and there is no justification for further prolonging this case against Ford. The engi-

neering analysis of the subject vehicle, the discovery relating to plaintiff's contentions and the pending motion have all been time-consuming and costly for Ford. To suggest that Ford should be further dragged through this case to somehow facilitate plaintiff's imaginary discovery is indeed unsupportable. To conclude, as plaintiff does, that to continue this action against Ford "is fair and just and not prejudicial" (Opp. memo. p. 11), is preposterous.

III. CONCLUSION

Plaintiff's three causes of action and therefore his entire action against Ford must be dismissed as a matter of law. This has already been an expensive case for Ford and we urge this Court not to postpone the entry of a final judgment. There is not evidence whatsoever to implicate Ford in the underlying accident or for the injuries allegedly sustained by plaintiff.

Dated: August 15, 1984.

Respectfully submitted,

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Richard A. Goette
Attorneys for Defendant
Ford Motor Company

(Proof of service omitted in printing)

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES OF
GREENE, O'REILLY, AGNEW & BROILLET
1122 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017-1993
(213) 482-1122
(213) 482-1350

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

NOTICE OF TAKING DEPOSITION
(RECORDS ONLY, NO APPEARANCE NECESSARY)

TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the deposition of the CUSTODIAN OF RECORDS OF CITY FORD COMPANY, will be taken on September 12, 1984, at 10:00 a.m., in the law offices of Greene, O'Reilly, Agnew & Broillet, located at 1122 Wilshire Blvd., Los Angeles, CA, before a Notary Public in and for Los Angeles County, CA, as may be present at said time and place.

In lieu of appearance, said CUSTODIAN OF RECORDS OF CITY FORD COMPANY may produce in the above-named law offices the documents and other tangible things described in the attached deposition subpoena to testify or produce documents or things on or before the date and time noticed for production.

DATED: August 17, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By: /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

NAME, ADDRESS AND TELEPHONE NUMBER
OF ATTORNEY(S)

GREENE, O'REILLY, AGNEW & BROILLET
1122 Wilshire Blvd.
Los Angeles, CA 90017 (213) 482-1122

ATTORNEY(S) FOR
Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NUMBER CV 84 2049 PAR (Mex)

DEPOSITION SUBPOENA TO TESTIFY
OR PRODUCE DOCUMENTS OR THINGS

TO: CUSTODIAN OF RECORDS OF CITY FORD
COMPANY

YOU ARE COMMANDED to appear at 1122 Wilshire Blvd., Los Angeles, CA (Street address) on September 12, 1984 at 10:00 a.m. o'clock a.m. to testify on behalf of CITY FORD COMPANY at the taking of a deposition in the above-entitled action pending in the United States District Court for the Central District of California and bring with you:

(Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things in which case the documents and things should be designated in the space provided below.)

all documents, writings, reports, design plans and specifications, or any other material pertaining to that certain 1968 Ford P-500 chassis with a model P-600 U.P.S. body bearing U.P.S. car number 18603

(see attached declaration of Timothy J. Wheeler)

DATED _____ LEONARD A. BROSNAN,
CLERK

BY _____
Deputy Clerk

NOTE: *Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30(b)(6), F.R. Civ.P.: to file a designation with the Court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.*

DECLARATION OF TIMOTHY J. WHEELER

I, Timothy J. Wheeler, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California, and am a member of the law firm of Greene, O'Reilly, Agnew & Broillet, plaintiff's counsel in this matter.

The documents requested in the application for subpoena duces tecum are material to the issues in this case and good cause exists for the production of said documents by reason of the following facts.

This is an action for severe personal injuries arising out of an accident that occurred on March 1, 1983. At the

time of the accident, a 1968 Ford P-500 parcel van owned and operated by United Parcel Service veered out of control, crashing and subsequently injuring the plaintiff driver, Gary Bryant.

Discovery and investigation have informed the plaintiff that the chassis of the subject vehicle was manufactured by Ford, however the designers and manufacturers of the seat as well as the seat restraint systems are unknown to the plaintiff at this time. Further investigation and discovery have revealed that the subject vehicle was purchased from City Ford Company, 1800 Pasadena Avenue, Los Angeles, CA, on or about May 31, 1968.

At the present time, plaintiff is making every effort to ascertain all necessary defendants in this matter, particularly the names of the designers and manufacturers of the seat and seat restraint system. Plaintiff believes that the receipt and distribution records, as well as all of the records requested in this subpoena duces tecum, will reflect the names of all persons or entities who participated in the design, manufacture, assembly and distribution of the subject vehicle and its component parts.

The complaint and answer in this matter raise the issue of liability for the accident, and the records requested for production are material to said issue.

Said records are the only original source of the information requested.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of August, 1984, at Los Angeles, California.

GREENE, O'REILLY, AGNEW
& BROILLET

By: /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Declarant

(Proof of service omitted in printing)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE PAMELA ANN RYMER, JUDGE
PRESIDING

(Caption omitted in printing)) NO. CV 84-2049-PAR
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, AUGUST 20, 1984

ELAINE J. COHEN, CSR 2706
OFFICIAL COURT REPORTER
442-A UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012
(213) 680-1639

APPEARANCES:

FOR THE PLAINTIFF:

GREEN, O'REILLY, BROILLET, PAUL,
SIMON, MCMILLAN, WHEELER & ROSENBERG
BY: JOHN SUTHERLAND
816 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-2516
(2L3) 482-1122

FOR THE DEFENDANT:

MCCUTCHEN, BLACK, VERLEGER & SHEA
BY: RICHARD A. GOETTE
600 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
(213) 624-2400

LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 20, 1984; 10:00 AM

THE CLERK: Item 17, Civil 84-2049, Gary Bryant versus Ford Motor Company.

Counsel, your appearances, please.

MR. GOETTE: Good morning, your Honor. Richard Goette of McCutchen, Black, Verleger & Shea on behalf of defendant Ford Motor Company, the moving party.

MR. SUTHERLAND: Good morning, your Honor. John Sutherland of Green, O'Reilly, et al., appearing on behalf of the plaintiff.

THE COURT: The ball is in your court.

MR. SUTHERLAND: May it please the court, I had a feeling it was.

Your Honor, I'd like to address a few points in the court's tentative. To begin with, I think that perhaps the theme of the case, if there has been one, is one of records which are difficult to obtain, hard to find and in fact which are difficult to ascertain. We know that the Ford Motor Company from its own statements manufactured the basic vehicle. We do not know, because we have been unable to determine to whom that vehicle was sold, precisely what input the Ford Motor Company had into the design of the finished vehicle, precisely whether the subject vehicle was finally sold as a Ford vehicle, precisely and under what circumstances the various internal components of the vehicle were added by equipment suppliers.

I would respectfully assert to the court that active discovery has been done with regard to this point, such discovery, including inspections of the vehicle, which have

not even proved sufficient for Ford Motor Company to determine who manufactured the internal components, extensive—informal but extensive contact with the plaintiff's employer, owner of the vehicle, which has finally disclosed the possibility, but not certainty, of the probable seller of the vehicle.

Now, as the court has pointed out under its rules, for us to at this point attempt at the last moment to bring in a nondiversity defendant might be improper, but I would propose to your Honor that it is not improper to permit the plaintiff under the rules of this court additional time to do certain discovery so that the precise nature of the involvement of the Ford Motor Company, whose own records have been destroyed under its normal records destruction proceedings, to determine precisely what involvement the Ford Motor Company had with the subject vehicle.

We have shown a basic manufacturing connection, but because at least in part of Ford's own document procedures we have been unable up to the present time to prove precisely what input into the manufacturing of the subject vehicle the Ford Motor Company had.

Now, in this recently filed case, a second concern that I have is procedurally nothing be done to compromise the rights of the plaintiff with the convenience of this court to bring in such additional parties as are necessary who may be discovered through further inquiry to the plaintiff's employer through leads that the plaintiff's employer has given to the plaintiff, to permit further parties properly to be brought before this court for the adjudication of the questioned liability of the most serious

injuries that the plaintiff has suffered, and I'd be happy to address any questions that the court might have with regard to these points.

THE COURT: Well, I just do not believe that a showing for further discovery or for a continuance motion pending further discovery is sufficient. It seems to me that it is just a real speculative venture and there isn't the kind of showing that discovery of third parties would show any connection whatsoever between Ford and the parts which you say are defective. The record seems very clear that Ford is entitled to summary judgment based upon the lack of any genuine dispute over material facts, and so I'm going to rule in accordance with the tentative.

Mr. Sutherland: Can this be done in such a fashion that it does not compromise the right of the plaintiff to bring in such other further parties as the United Parcel Service may disclose to it?

THE COURT: Well, I'm going to grant the motion for summary judgment.

Mr. Goette?

MR. GOETTE: Yes, your Honor. That issue obviously is not before the court. The single issue presented by this motion is whether the summary judgment is properly taken. Whatever course of action the plaintiff chooses to take in the future is his own business.

THE COURT: Yes. I think that's going to be up to you. I'm just going to grant the summary judgment in accordance with the tentative.

MR. GOETTE: Thank you, your Honor.

MR. SUTHERLAND: Thank you, your Honor.

I, Elaine J. Cohen, CSR 2706, do hereby certify that the foregoing is a true and correct transcription of my stenographic notes.

Dated this — day of December 1984

/s/ Elaine J. Cohen
Elaine J. Cohen

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 84-2049 PAR

Date 8/20/84

Title Gary Bryant -v- Ford Motor Co.

DOCKET ENTRY

PRESENT:

HON. PAMELA ANN RYMER, JUDGE

Linda Orona

Elaine Cohen

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

John Sutherland

ATTORNEYS PRESENT FOR DEFENDANTS:

Richard Goette

PROCEEDINGS: Defendant's motion for summary judgment & summary adjudication of issues.

Court issues a tentative ruling.

Counsel argue.

Court grants defendant's motion for summary judgment.

Initials of Deputy Clerk LO

Tentative Ruling

CV84-2049 Bryant v. Ford Motor Co.

Defendant's Motion for Summary Judgment

Grant Motion

This action for personal injuries arising out of an auto accident was commenced in Los Angeles County Superior Court and removed by defendant Ford Motor Co. (Ford) to this Court on the ground that complete diversity of citizenship exists between the parties and that Ford is not a citizen of California. 28 U.S.C. § 1441(b). Although Ford is the only named defendant in the complaint, plaintiff also named doe defendants. In its petition for removal,

Ford alleges that the doe defendants are sham and cannot defeat removal of this action. [Removal Petition at ¶ 7.]

After some discovery, Ford now moves for summary judgment on the ground that it did not design, assemble or manufacture the seat or the seat belt system—the components of the vehicle that plaintiff claims caused his injuries.

The following facts are not disputed:

1. Plaintiff is a California citizen and former employee of United Parcel Service, Inc., Ford Motor Co. ("Ford") is incorporated under the laws of the state of Delaware and has its principal place of business in Michigan.
2. On March 1, 1983, plaintiff was involved in a single vehicle accident which occurred while he was driving a truck owned by his employer.
3. Ford designed and assembled certain component parts of the chassis (Model No. P-500) of the vehicle driven by plaintiff at the time of the accident.
4. Ford did not design or assemble the seat belt system or seats in the vehicle driven by plaintiff.

Issues Raised by Summary Judgment Motion

1. Is there any evidence that connects Ford to the allegedly defective seat and/or seat belt system?
2. Should plaintiff be permitted to conduct additional discovery?
3. Does the possible existence of non-diverse defendants who have not been named destroy the subject-matter jurisdiction of this court?

No Evidence Has Been Adduced that Connects Ford to the Seats or Seat Belt System.

Ford has submitted evidence in the form of an affidavit by James Scott in which Mr. Scott, a 28-year employee of Ford, states that Ford only designed and assembled the P-500 chassis and did not design, manufacture or assemble the seat or seat belt system for the vehicle which was involved in the accident. The chassis of the vehicle driven by plaintiff was built at the Michigan truck assembly plant in July, 1982 according to the vehicle identification number. However, because Ford does not retain sales records and other possibly relevant documents, it can submit no documentary evidence to confirm Mr. Scott's statements.

Plaintiff admits that he has no evidence at this time that connects Ford with the allegedly defective seats and seat belt system. Plaintiff argues that the lack of evidence precludes summary judgment. In his statement of genuine issues of material fact, plaintiff speculates whether Ford provided specifications, plans, consultation services or financial support to the person or persons who purchased the Ford chassis upon which the subject vehicle was built. The Scott testimony would support the inference that Ford was not at all involved in the design or manufacture of the seats or seat belt system. Plaintiff has not adduced any evidence that raises a genuine issue of fact. A party opposing summary judgment must present some significant probative evidence tending to support his complaint. *Compton v. Ide*, 732 F.2d 1429, 1434 (9th Cir. 1984). Accordingly, based on the record presented, the Court finds that there is no genuine issue of material fact regarding Ford's non-involvement with the design, manufacture or assembly of the seats or seat belt system or any other component of the vehicle other than the chassis.

Plaintiff Should Not Be Permitted Additional Discovery

Plaintiff appears to be requesting additional time for discovery in order to oppose defendant's motion. Federal Rule of Civil Procedure 56(f) provides that the court may refuse to rule on a summary judgment motion if it appears by way of affidavit of the party opposing the motion that he needs additional time to conduct discovery which will provide him with the facts necessary to oppose the motion. In his declaration, plaintiff's counsel does not state that discovery from third parties will demonstrate that defendant Ford is liable for plaintiff's injuries but rather that other entities are at least partially liable for the injuries. Plaintiff apparently hopes that this discovery of third parties and potential defendants may show that Ford was in some manner involved in the making or designing of the seats and seat belt system. "A vague claim of the need for additional discovery, unsupported by any basis in fact, is an insufficient ground upon which to oppose a motion for summary judgment." *R-T Leasing Corp. v. Ethyl Corp.*, 494 F.Supp. 1128, 1139 (S.D.N.Y. 1980); *Willmar Poultry Co. v. Morton-Norwich Products, Inc.*, 520 F.2d 289 (9th Cir. 1975). *Securities & Exchange Comm'n v. Spence & Green Chem Co.*, 612 F.2d 896, 901 (5th Cir. 1980) ("Because the burden on a party resisting summary judgment is not a heavy one, one must conclusively justify his entitlement to the shelter of rule 56(f) by providing specific facts explaining the inability to make a substantive response as required by Rule 56(e) and by specifically demonstrating 'how postponement of a ruling on the motion will enable him, by discovery or by other means, to rebut the movant's showing of the absence of a genuine issue of fact.'") Plaintiff has not made an ade-

quate showing that discovery of third parties will reveal connections between Ford and the allegedly defective parts.

It is within the trial court's sound discretion to decide whether to grant a continuance under Rule 56(f). The inadequacy of plaintiff's showing persuades the court to deny any such request.

The unnamed potential defendants do not deprive this court of subject-matter *jurisdiction requiring* remand of the action to state court.

Although he has not made a motion to add additional parties or a motion to remand, plaintiff now apparently believes that there are California defendants who might be liable to him. It appears that plaintiff has not tried to identify a possible doe defendant until he found that his case was in trouble. The Ninth Circuit has taken the view that last minute attempts to plead in a doe defendant in order to stave off a summary judgment motion may be rejected. *Lopez v. General Motors Corp.*, 697 F.2d 1328 (9th Cir. 1983) Here plaintiff has not even made motions to add additional defendants; he mere speculates on what he may do in the future. Plaintiff has had almost five months since this action was removed to identify doe defendants and move to remand if warranted. His failure to do so justifies this Court's decision to reject his argument that summary judgment should be denied so that he may find a non-diverse doe.

It Is Therefore Ordered that defendant Ford Motor Co.'s motion for summary judgment is granted. Ford Motor Co. is entitled to summary judgment on all claims of plaintiff's complaint.

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK, VERLEGER & SHEA
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Attorneys for Defendant
Ford Motor Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

No. 84 2049 PAR (Mex)

JUDGMENT

(Entered August 27, 1984)

Date: August 20, 1984

Time: 10:00 a.m.

The motion of defendant Ford Motor Company ("Ford") for summary judgment and summary adjudication of issues came on for hearing on August 20, 1984, before the Honorable Pamela A. Rymer, United States District Judge presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS HEREBY ORDERED AND ADJUDGED that:

1. The plaintiff's negligence claim as alleged in the first cause of action in the complaint herein shall be dismissed as a matter of law.

2. The plaintiff's breach of warranty claim as alleged in the second cause of action in the complaint herein shall be dismissed as a matter of law.

3. The plaintiff's strict liability claim as alleged in the third cause of action in the complaint herein shall be dismissed as a matter of law.

4. Ford is entitled to summary adjudication of the issues and dismissal of the first, second and third causes of action.

Dismissal of these causes of action shall be entered accordingly.

Dated: August 21, 1984.

/s/ Pamela Ann Rymer
Pamela Ann Rymer
United States District Judge

Law Offices of
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1122 Wilshire Boulevard
Los Angeles, California 90017-1993
(213) 482-1122
(213) 482-1350
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

NOTICE OF MOTION AND MOTION TO REMAND TO
SUPERIOR COURT; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF TIMOTHY
J. WHEELER

(Filed August 29, 1984)

Date: September 24, 1984

Time: 10:00 a.m.

PLEASE TAKE NOTICE that at 10:00 a.m. on September 24, 1984, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Pamela A. Rymer, United States District Judge, 312 North Spring Street, Los Angeles, CA 90012, plaintiff, GARY BRYANT, will move this Court for an Order:

(a) Remanding this matter to the Superior Court of the State of California, County of Los Angeles, on the grounds that the Superior Court of the State of California is the court of proper jurisdiction in this matter and that diversity jurisdiction no longer exists, as this matter was originally removed improvidently and without knowledge of the existence of other liable parties.

This motion is based on this notice of motion, the pleadings and documents on file herein, the memorandum of points and authorities attached hereto, the declaration of Timothy J. Wheeler, and any oral argument which may be presented at the time of the hearing of this motion.

DATED: August 23, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

This case arises out of a single vehicle accident which occurred on or about March 1, 1983. As a result of this accident, plaintiff sustained severe and permanent bodily injury. To date, Ford Motor Company, a corporation, was the only named defendant in this action and was being prosecuted on theories of negligence, strict liability and breach of warranty. Ford Motor Company, *only*, was granted relief by summary judgment on August 20, 1984.

Since before the filing of the complaint in this action, plaintiff has conducted discovery and investigation in an effort to determine the truly liable parties responsible for plaintiff's injuries. Based on information and belief that the United Parcel Service van involved in this acci-

dent was manufactured by Ford Motor Company, plaintiff filed his complaint against Ford Motor Company and thereafter commenced formal discovery.

Since the initiation of his discovery, plaintiff has determined the names of at least three additional potential defendants, namely: General Seat and Sash, located in Tompton, Pennsylvania; Grumman-Olson Company, located in Los Angeles, California; and City Ford Company, located in Los Angeles, California. Discovery and investigation have also led plaintiff to believe that the design and manufacture of the seat restraint system found in the subject vehicle was performed by a California corporation located in Pacoima, California. However, plaintiff does not have sufficient evidence at this time to name this entity as a defendant, but intends to do so in the future should investigation warrant same.

Based on the recent discovery of at least two California companies as defendants in this matter, plaintiff requests that this court remand this matter back to the Superior Court of the State of California, Central District, where suit was initially filed.

II.

LACK OF DIVERSITY OF CITIZENSHIP WARRANTS REMAND OF THIS MATTER BY THE SUPERIOR COURT.

Title 28 U.S.C.S. § 1447(c) states in part that:

“If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case and may order the payment of just costs. . .”

In the case of *Clark v. Safeway Stores, Inc.*, (1953 DC W.D. MO) 117 F.Supp. 583, the court was faced with a situation where the original complaint had been filed in state court but the defendant had petitioned to the federal court for removal of that action based upon diversity of citizenship, and that the amount in controversy was within the jurisdiction of the court. In this case, there was no question as to the federal court's proper jurisdiction over the case. Subsequently, the plaintiff amended his complaint by joining a local defendant and thereupon filed his motion to remand upon the ground that there was no diversity of citizenship which would confer jurisdiction upon the court. The plaintiff reasoned that by the amendment the court had lost jurisdiction over the action. The defendant who had removed the action to federal court strongly resisted the motion by the plaintiff upon the grounds that the amendment was without defendant's consent. The court held that where the plaintiff had obtained leave of the federal court to file an amended complaint which joined a local defendant and which stated a joint cause of action, written consent of the adversary party was unnecessary and the case would be properly remanded to superior court.

It was also held in the case of *Roecker v. Railways Express Agency, Inc.*, (1945 DC MO.) 63 F.Supp. 5, that if after removal a complaint was amended so as to destroy diversity of citizenship, the case should have been remanded.

Plaintiff's motion for leave to file his first amended complaint will be heard concurrently with this motion. In the event that this court grants plaintiff's motion for

leave to file his first amended complaint to allow the plaintiff to name additional defendants, but not limited to Grumman-Olson Company and City Ford Company, both located in Los Angeles, California, complete diversity in this action will be destroyed. It is respectfully submitted that as there would not be complete diversity in this matter, the court's proper procedure pursuant to Title 28 U.S.C.S. § 1447(c), would be to remand this action to the appropriate state court.

III

DEFENDANT, FORD MOTOR COMPANY'S, REMOVAL OF PLAINTIFF'S ACTION WAS MADE IMPROVIDENTLY AND WITHOUT FORESIGHT.

As defined in the case of *Soam Corporation v. Trane Company*, (1980 SD NY) 506 F.Supp. 302, the term "removed improvidently" means without foresight and without providing for future events. In the case at hand, defendant, Ford Motor Company, removed plaintiff's action on March 29, 1984. A vehicle inspection of the subject vehicle did not take place by engineers of Ford Motor Company or members of this office until May 10, 1984. It was at this time that both parties discovered that Ford Motor Company manufactured the chassis of the subject vehicle, and that other component parts of the vehicle were designed and manufactured by other entities. As such, at the time of removal of plaintiff's action to the federal court, it was not known that other defendants were liable for plaintiff's injuries. It was not known until June 10, 1984, that City Ford Company was the distributor of the subject vehicle and therefore liable in part for plaintiff's

injuries. As such, the circumstances at hand fall within the definition of the term "removed improvidently," as future facts and events were not known by either party at the time of removal.

IV

CONCLUSION

For the foregoing reasons, the plaintiff respectfully requests that the court remand this action to the Superior Court of the State of California, County of Los Angeles.

DATED: August 29, 1984

Respectfully submitted,

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

DECLARATION OF TIMOTHY J. WHEELER

I, Timothy J. Wheeler, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California as well as the United States District Court. I am the attorney at the law offices of Greene, O'Reilly, Agnew & Broillet duly responsible for the handling of the matter of *Gary Bryant v. Ford Motor Company*, and could and would competently testify to all matters herein.

Plaintiff's initial interview with this office occurred in late November, 1983. Plaintiff's complaint in this action was filed on January 27, 1984. At that time, the

only information available to the plaintiff was that the subject United Parcel Service van involved in this accident was manufactured by Ford Motor Company. Investigation into this accident revealed that the subject United Parcel Service van was manufactured by Ford Motor Company, and therefore plaintiff subsequently filed its complaint against Ford Motor Company only. It was not until after meetings with attorneys for Ford Motor Company as well as an inspection of the subject vehicle did plaintiff realize that additional persons and entities were also responsible for the design, manufacture and implementation of the defective seat and seat restraint system which caused plaintiff's injuries.

As plaintiff has been diligent in his investigation and discovery over the past seven months, it would be highly prejudicial to the plaintiff if he was not allowed to join additional party defendants and to amend his complaint accordingly.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of August, 1984, at Los Angeles, California.

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Declarant

Law Offices of
GREENE, O'REILLY, AGNEW & BROILLET
1122 Wilshire Boulevard
Los Angeles, California 90017-1993
(213) 482-1122
(213) 482-1350
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

NOTICE OF MOTION AND MOTION

1. TO JOIN ADDITIONAL DEFENDANT PARTIES
PURSUANT TO RULE 20 OF THE FEDERAL
RULES OF CIVIL PROCEDURE; AND
2. FOR LEAVE TO FILE FIRST AMENDED COM-
PLAINT OR IN THE ALTERNATIVE TO RE-
MAND THIS ACTION TO THE PROPER STATE
COUR; MEMORANDUM OF POINTS AND AU-
THORITIES; DECLARATION OF TIMOTHY J.
WHEELER

(Filed August 29, 1984)

Date: September 24, 1984

Time: 10:00 a.m.

PLEASE TAKE NOTICE that at 10:00 a.m. on Sep-
tember 24, 1984, or as soon thereafter as counsel may be
heard, in the courtroom of the Honorable Pamela A. Ry-
mer, United States District Judge, 312 North Spring Street,
Los Angeles, CA 90012, plaintiff, GARY BRYANT, will
move this Court for an Order:

(a) Joining the below-listed entities as defen-
dants in this action on the grounds that each is a proper

party defendant, under Rule 20(a) of the *Federal Rules of Civil Procedure*;

(1) Grumman-Olson Company, located in Los Angeles, CA;

(2) City Ford Company, located in Los Angeles, CA;

(3) General Seating and Sash Company, located in Tompton, Pennsylvania;

(b) Permitting plaintiff to file an amended complaint pursuant to Rule 15 of the *Federal Rules of Civil Procedure*, on the grounds that an amendment to plaintiff's original complaint is necessary in order to state causes of action against the above-listed entities and to make them party defendants herein, or;

(c) In the alternative, plaintiff requests that this court remand this action to the proper State Court pursuant to plaintiff's motion to remand filed concurrently herein.

This motion is based on this notice of motion, the pleadings and documents on file herein, the memorandum of points and authorities attached hereto, the declaration of Timothy J. Wheeler, and any oral argument which may be presented at the time of the hearing of this motion.

DATED: August 29, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

MEMORANDUM OF POINTS
AND AUTHORITIES

I

INTRODUCTION

This case arises out of a single vehicle accident which occurred on or about March 1, 1983. As a result of this accident, plaintiff sustained severe and permanent bodily injury. To date, Ford Motor Company, a corporation, was the only named defendant in this action and was being prosecuted on theories of negligence, strict liability and breach of warranty. Ford Motor Company *only*, was granted relief by summary judgment on August 20, 1984.

Since before the filing of the complaint in this action, plaintiff has conducted discovery and investigation in an effort to determine the truly liable parties responsible for plaintiff's injuries. Based on information and belief that the United Parcel Service van involved in this accident was manufactured by Ford Motor Company, plaintiff filed his complaint against Ford Motor Company and thereafter commenced formal discovery.

Since the initiation of his discovery, plaintiff has determined the names of at least three additional defendants, namely: General Seat and Sash Company located in Tomp-
ton, Pennsylvania; Grumman Olson Company located in Los Angeles, California, and City Ford Company located in Los Angeles, California.

In lieu of the above-mentioned discovery and on the memorandum of points and authorities, plaintiff requests that this court grant its order allowing the plaintiff to join additional parties and to amend his original complaint accordingly.

II

PERMISSIVE JOINDER OF PARTIES

Federal Rule of Civil Procedure No. 20 states in part:

"All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action . . ."

Furthermore, in the cases of *Mesa Computer Utilities v. Western Union Computer Utilities, Inc.*, (1975 DC Del.) 67 FRD 634, and *Walker v. City of Houston*, (1971 DC Texas), 341 F.Supp. 1124, the courts recognized the true test necessary for joinder under Rule 20 of the *Federal Rules*. Part one of the test requires the occurrence of some question of fact or law common to all parties while the second test requires the existence of a right to relief predicated upon or arising out of a single transaction or occurrence or series of transactions.

In the case at hand, both tests are satisfied as plaintiff's injuries arise out of a single accident which occurred on March 1, 1983. Plaintiff's theories of negligence, breach of warranty and strict liability apply to those defendants, jointly and severally, who participated in the design, manufacture and/or implementation of the defective seat and seat restraint system incorporated into the United Parcel Service van which the plaintiff was driving at the time of the accident.

Plaintiff's ongoing discovery and investigation has revealed other liable defendants in this action as men-

tioned above, and therefore requests that this court allow the joinder of these defendants so that plaintiff may be compensated for his serious injuries.)

Based upon information and belief, and plaintiff's ongoing investigation, plaintiff believes Grumman-Olson Company, located in Los Angeles, California, designed and manufactured the body of the subject vehicle incorporated with the chassis designed and built by Ford Motor Company. As the designer, manufacturer and installer of the vehicle's body, plaintiff believes that Grumman-Olson Company is liable in some degree for plaintiff's injuries due to the incorporation of the defective seat and seat restraint system in the subject vehicle, as well as the placement of the seat components in the unpadded driver's compartment.

Based upon plaintiff's investigation, plaintiff discovered on June 10, 1984, by correspondence from plaintiff's employer's attorneys that City Ford Company, located in Los Angeles, California, distributed the subject vehicle and its component parts. Therefore, plaintiff believes there is liability on the part of City Ford Company as distributor of the subject vehicle and its defective component parts, and therefore should not escape liability for plaintiff's injuries. Plaintiff thereby requests that this court allow him to name City Ford Company as a defendant in this accident in an effort to expedite the final determination of the disputed liability in this action, one of the purposes of Rule 20. *Mosely v. General Motors Corporation*, (1974 C.A.8 MO) 497 F.2d 1330.

Finally, by way of investigation and discovery, plaintiff has discovered that General Seating and Sash Company, located in Tompton, Pennsylvania, designed and

manufactured the defective seat implemented with the subject vehicle, and therefore there is clear liability on behalf of this defendant warranting its joinder in this action.

Plaintiff has yet to determine the name or names of the persons or entities responsible for the design, manufacture and/or implementation of the defective seat restraint system found with the subject vehicle at the time of the accident, however plaintiff believes that this defendant is a company located in Pacoima, California. Plaintiff wishes to conduct further investigation and discovery before actually naming this entity.

As plaintiff's injuries clearly arose from a single accident, part of which was the result of the design, manufacture and implementation of a defective seat and seat restraint system in the subject vehicle, the designer, manufacturer, assembler and distributor of the defective vehicle and its component parts should be joined as defendants in this action to compensate the plaintiff for his injuries. Since this accident, plaintiff has undergone five serious back surgeries, and at the present time cannot walk, experiences severe pain and discomfort, paralysis of his right leg from his hip to his foot, and requires continuous care and attention.

III

AMENDED AND SUPPLEMENTAL PLEADINGS

Rule 15(a) of the *Federal Rules of Civil Procedure* states in part that:

" . . . A party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. . . "

The federal courts have construed Rule 15(a) liberally. In *Polin v. Dunn and Bradstreet, Inc.*, (1975 C.A. 10 Okla.) 511 F.2d 875, the court held that although a trial court has discretion in granting or denying leave to amend the complaint under Rule 15(a), leave to amend by the court is to be freely granted.

Furthermore, "The function of Rule 15 is to provide parties opportunity to assert new matters that may not have been known to them at the time they filed their original pleadings." *Johnson v. Helicopter and Airplane Services Corp.*, (1974 DC MD) 389 F.Supp. 509. In the case at hand, the plaintiff was unaware at the time he filed his complaint against Ford Motor Company that Ford did not manufacture the entire van, but only portions of it.

Plaintiff's discovery and investigation has revealed since the time of the filing of his complaint, that other party defendants are potentially liable for the severe injuries suffered by the plaintiff in this accident. City Ford Company, as distributor of the completed vehicle, General Seat and Sash Company, as designer and manufacturer of the defective seat, and Grumman-Olson Company, as designer and manufacturer of the truck body, as well as the unknown designer, manufacturer and implementer of the defective seat restraint system, are all parties which should be joined in this action. The plaintiff should not be prejudiced by not being allowed to amend his complaint to include the above-named defendants as plaintiff was unaware of their existence and involvement when he filed his complaint on January 27, 1984. Over the past seven months, plaintiff has been able to determine the existence of these parties, and thereby requests that this court allow

an amendment to his complaint to include them as defendants.

As the court well knows, in determining whether to allow plaintiff leave to amend his complaint, the court should consider any prejudice which may be caused the defendants by looking at the (1) good faith of the movant, (2) extent to which there would be undue delay by allowing such amendment, and (3) the degree to which the amendment would needlessly delay final disposition of this case. *L.D. Schreiber Cheese Company v. Clearfield Cheese Company*, (1980, WD PA) 495 F.Supp. 313. In the case at hand, there is no adverse party to consider as Ford Motor Company has been granted relief by summary judgment. The plaintiff makes this request for leave to amend its complaint in good faith, as someone is clearly liable for the injuries sustained by the plaintiff as a result of the design, manufacture and implementation of the defective seat and seat restraint system in the subject vehicle. Furthermore, granting leave to amend this complaint would not cause any undue delay nor would it delay the final disposition of this case. If the plaintiff is not allowed to name additional defendants and conduct discovery as against each of them in an effort to determine the extent of each party's liability, then it is the plaintiff who would be severely prejudiced.

Therefore, plaintiff respectfully requests that this court allow plaintiff to join the defendants named herein as additional parties to this lawsuit, and subsequently amend its complaint accordingly so as to properly name each of these defendants, or in the alternative, remand

this matter to the proper State Court pursuant to plaintiff's motion to remand filed concurrently herein.

DATED: August 29, 1984

Respectfully submitted,
GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

[Declaration of Timothy J. Wheeler,
signed August 29, 1984, see at pp. 142-143.]

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(213) 482-1122
(213) 482-1350

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

NOTICE OF APPEAL

TO THE CLERK OF THE ABOVE-ENTITLED
COURT:

NOTICE IS HEREBY GIVEN that plaintiff, GARY BRYANT, hereby appeals to the Federal Court of Appeal for the Ninth Circuit from this court's order granting summary judgment in this matter entered herein on August 27, 1984, in favor of the defendant, FORD MOTOR COMPANY, and against the plaintiff, GARY BRYANT, providing as follows:

See Exhibit "A" attached hereto.

NOTICE SHALL BE GIVEN to the only defendant in this matter, FORD MOTOR COMPANY, by and through its attorney of record: McKutchen, Black, Verleger & Shea, 600 Wilshire Blvd., Los Angeles, CA 90017, Attention: Richard Goette, Esq.

DATED: September 26, 1984

Respectfully submitted,

GREENE, O'REILLY, AGNEW
& BROILLET

By Timothy J. Wheeler

TIMOTHY J. WHEELER

Attorneys for Plaintiff and

Appellant, GARY BRYANT

(Proof of service omitted in printing)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES — GENERAL

Case No. CV 84-2049 PAR Date 9/28/84

Title Gary Bryant -v- Ford Motor Company

DOCKET ENTRY

PRESENT:

HON. PAMELA ANN RYMER, JUDGE
Linda Orona No Appearance
Deputy Clerk Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS

Not Present

ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

PROCEEDINGS:

Judgment was entered for the sole defendant in this case, Ford Motor Co., on August 27, 1984. On August 29, 1984 plaintiff filed a "motion to remand" to the State Court. Because the Court has no jurisdiction over the action except pursuant to FRCP 60(b), no action will be taken by the Court on the instant motion.

cc: counsel of record.

Initials of Deputy Clerk LO

Law Offices of

GREENE, O'REILLY, AGNEW & BROILLET

1122 Wilshire Boulevard

Los Angeles, California 90017-1993

(213) 482-1122

(213) 482-1350

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

NOTICE OF MOTION AND MOTION FOR RELIEF
FROM JUDGMENT OF ORDER (F.R.C.P. § 60(b)) OR
IN THE ALTERNATIVE, A MOTION FOR RECON-
SIDERATION: LOCAL RULE 7.16

(Filed October 4, 1984)

Date: October 29, 1984

Time: 10:00 a.m.

PLEASE TAKE NOTICE that on October 29, 1984, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Pamela A. Rymer, United States District Court, 312 North Spring Street, Los Angeles, California 90012, plaintiff, GARY BRYANT, will move this court for an order:

(a) Granting relief to the plaintiff from this court's ruling granting summary judgment to the defendant, FORD MOTOR COMPANY, entered on August 27, 1984, pursuant to *Federal Rules of Civil Procedure* 60(b);

In the alternative, plaintiff requests that this court reconsider its ruling with regard to defendant's motion for summary judgment pursuant to *United States District Court Local Rule* 7.16.

The purpose of plaintiff's request to reopen the judgment or, in the alternative, reconsider its ruling is to allow the plaintiff to present to this court the following motions previously filed on August 29, 1984:

1. To join additional defendant parties pursuant to Rule 20 of the *Federal Rules of Civil Procedure*;
2. For leave to file first amended complaint; and thereafter
3. Remand this entire matter to the Superior Court.

This motion is based on the grounds that summary judgment was granted as to FORD MOTOR COMPANY *only* and should not close this matter in its entirety. To do so would prevent the plaintiff from naming other known parties who are in part liable for plaintiff's serious and permanent bodily injuries. Not to reopen the judgment in this matter or at least reconsider its own ruling, the court would in effect be preventing the plaintiff from seeking redress for the permanent injuries received as a result of this accident, which were clearly no fault of his own. Such non-action would further cause plaintiff undue hardship as plaintiff must proceed now to determine the liable parties from which he may seek redress. To await the outcome of an appeal would severely prejudice the plaintiff in his claim for damages. Plaintiff wishes only to reopen the judgment to allow for the consideration of the motions mentioned above. Such action will in no way effect the court's order granting summary judgment or suspend its operation.

This motion is further based on this notice of motion, the pleadings and documents on file herein, the memoran-

dum of points and authorities attached hereto, the declarations of John Sutherland and Timothy J. Wheeler, and any oral argument which may be presented at the time of the hearing of this motion.

DATED: October 1, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
Timothy J. Wheeler
Attorneys for Plaintiff,
GARY BRYANT

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

This action arises out of a single vehicle accident which occurred on or about March 1, 1983. As a result of this accident, plaintiff sustained severe and permanent bodily injury, including but not limited to paralysis of the right leg and major back injuries requiring five radical surgeries. On or about July 9, 1984, the only defendant in this matter at that time, FORD MOTOR COMPANY, filed its motion for summary judgment. Said motion was heard on August 20, 1984, and granted in favor of FORD MOTOR COMPANY.

On or about August 27, 1984, this court entered judgment in favor of FORD MOTOR COMPANY, dismissing FORD from this lawsuit. It was understood by counsel for the plaintiff at the hearing of this motion on August 20, 1984, that summary judgment was granted as to FORD MOTOR COMPANY *only* and that plaintiff would be allowed to name additional defendants in this matter based

on information determined through ongoing discovery and investigation. (See declaration of John Sutherland attached hereto as Exhibit "A".) Based on the belief that summary judgment was granted as to FORD MOTOR COMPANY *only* and that plaintiff would be allowed to name additional defendants as their degree of liability was verified by investigation and discovery, plaintiff filed motions for (a) Joinder, (b) Leave to file first amended complaint, and (c) Remand. Said motions were set to be heard on September 24, 1984, at 10:00 a.m. in this court.

On or about September 24, 1984, attorney John Sutherland of this office attended the scheduled hearing of the above-mentioned motions. At that time, Mr. Sutherland was informed that by reason of the granting of the summary judgment as to FORD MOTOR COMPANY and in lieu of the fact that FORD MOTOR COMPANY was the only named defendant at that time, that the entire case had been closed and taken off the court's active list. This was contrary to the belief of the plaintiff and Mr. Sutherland that plaintiff would be allowed to name additional defendants as discovery and investigation permitted as per the prior Summary Judgment hearing.

II

DISCOVERY OF ADDITIONAL DEFENDANTS

As mentioned in plaintiff's opposition to defendant's motion for summary judgment, as well as in plaintiff's motions re: Joinder, Leave to amend, and Remand, discovery and investigation have placed liability, in part, on the following entities:

(a) City Ford Company, located in Los Angeles, California;

(b) Gruman-Olson Company, located in Los Angeles, California; and

(c) General Seating and Sash Company, located in Tompton, Pennsylvania.

(d) The name of the person or persons or entities responsible for the design, manufacture, assembly or installation of the defective seat restraint system has yet to be determined and cannot be determined until plaintiff is allowed to conduct further discovery as against the above-named potential defendants.

On or about July 10, 1984, plaintiff's attorneys received correspondence from plaintiff's employer's attorney verifying that the subject vehicle was purchased from City Ford Company in Los Angeles on or about May 31, 1968. [A copy of said correspondence is attached hereto as Exhibit "B".] This information was received after defendant filed its motion for summary judgment [July 9, 1984], which clearly shows that plaintiff was still in the process of discovering the involvement of additional defendants at the time he was preparing his opposition to defendant's motion for summary judgment. Also, the involvement of Grumman-Olson Company was not discovered until after the defendant filed its motion for summary judgment based upon the information and belief of consultant experts utilized by the plaintiff in this action.

It was not until just recently on September 12, 1984, that plaintiff received documentation from potential defendant, City Ford Company, with regard to documentation, writings, reports, etc., concerning the subject vehicle. [A copy of the subpoena duces tecum re deposition is attached hereto as Exhibit "C".] As a result of said sub-

poena, plaintiff was notified that no records exist with regard to the subject vehicle. Lack of documentary evidence emphatically requires that the plaintiff take depositions and conduct other formal discovery to determine the location of these records with regard to the subject vehicle. As distributor of the subject vehicle, City Ford Company is in an excellent position to provide evidence as to the parties responsible for the design, manufacture, assembly and/or implementation of the defective seat belt restraint system into the subject vehicle. This evidence can only be obtained by means of formal discovery including interrogatories and depositions.

In effect, plaintiff's hands are tied from conducting further discovery as against the above-named entities unless this court reopens its judgment and allows the joinder of additional parties, or in the alternative reconsiders its ruling with regard to defendant's motion for summary judgment and thereafter reconsider plaintiff's motions for Joinder, Leave to amend, and Remand.

III

THE COURT HAS THE POWER TO GRANT RELIEF FROM THE SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT, FORD MOTOR COMPANY, FOR ANY JUSTIFIABLE REASON. *Federal Rules of Civil Procedure* 60(b)(6).

The plaintiff is not requesting relief from the court's order granting summary judgment in favor of the defendant based on mistake, inadvertence, newly discovered evidence or fraud under 60(b)(1-5), but solely on the grounds that:

(a) This court's granting the summary judgment of FORD MOTOR COMPANY *only* should not preclude the plaintiff from naming additional party defendants whose identities were not discovered until after defendant's motion for summary judgment was filed;

(b) The discovery conducted against City Ford Company by way of subpoena duces tecum re deposition has not provided the requested documentation necessary to the issues of liability in this matter. Therefore, depositions and interrogatories must be served upon City Ford Company as a party to this lawsuit to determine the necessary information. Note that City Ford Company has been determined to be the distributor of the subject vehicle, and therefore relevant information is within their knowledge and control and/or possession which will inform the plaintiff as to the other parties necessary to this lawsuit;

(c) To deny the plaintiff relief from the court's order granting summary judgment as to FORD MOTOR COMPANY only would preclude the hearing of plaintiff's motions re: (1) Joinder, (2) Leave to amend accordingly, and (3) Remand. Without a hearing of these motions, plaintiff will be forever precluded from obtaining compensation for his severe and permanent disabling injuries to which he is entitled by law.

(d) Extraordinary circumstances as well as undue hardship and injustice to the plaintiff warrant the court's discretion under *Federal Rules of Civil Procedure* 60(b)(6).

The so-called "residual clause" of F.R.C.P. 60(b)(6) was intended to cover unforeseen contingencies and to be a means for accomplishing justice under exceptional cir-

cumstances, particularly where extreme hardship and/or injustice for the plaintiff would result. *United States v. McDonald*, 86 F.R.D. 204 (N.D. Ill. E.D. 1980)

In the *McDonald* case, the court allowed the McDonalds to amend the foreclosure order to raise the "homestead exemption" claim which they omitted to raise at the time of the foreclosure hearing. The court found that if they did not allow the McDonalds to amend the foreclosure order to include the homestead exemption claim, that the McDonalds would suffer undue hardship and injustice if they lost their home.

In the case at hand, plaintiff will also experience extreme hardship and injustice if the court does not allow the judgment to be reopened so as to allow the plaintiff to bring its motions for (a) Joinder of additional parties; (b) Leave to amend its complaint, and (c) Remand. Plaintiff requests that this court reconsider its judgment so as to allow the plaintiff to name additional defendants in this lawsuit so that the plaintiff may proceed against those parties responsible for his serious injuries. Not to do so will leave the plaintiff permanently disabled for the remainder of his life without recourse to pursue those parties liable for his injuries. A comparison of the damages that the McDonalds would have suffered are far less severe than those that the plaintiff stands to incur if this motion is not granted.

Plaintiff understands that "extraordinary circumstances" are necessary in order to obtain relief under *F.R.C.P.* 60(b)(6). In the case at hand, it is essential that plaintiff continue his investigation and discovery and proceed with lawsuits against the other potential defendants named herein as the following events will surely occur:

- (1) evidence will be lost, (2) testimony will be forgotten,
- (3) additional documentation will be destroyed with time,
- (4) plaintiff's injuries will worsen without proper medical care and treatment.

The above-mentioned circumstances require that the court use its discretion and apply 60(b)(6) in this instance.

IV

ONCE EXTRAORDINARY CIRCUMSTANCES AND EXTREME HARDSHIP ARE FOUND, F.R.C.P. 60(b)(6) IS TO BE LIBERALLY APPLIED TO ACCOMPLISH JUSTICE. 7 *Moore's Federal Practice* 60.27(2) pp. 352, et seq.

Plaintiff believes that by the contents of this motion as well as the declaration of Timothy J. Wheeler attached hereto as Exhibit "D" that plaintiff has clearly shown extraordinary circumstances do exist in this matter and that plaintiff will in fact incur undue hardship and prejudice and injustice if he is not allowed to pursue this lawsuit against other liable defendants.

WHEREFORE, plaintiff respectfully requests that this court exercise its discretion under 60(b)(6) and consider plaintiff's motions to (1) Join additional parties, (2) Amend his complaint, and thereafter (3) Remand this matter to the Superior Court, the proper forum for this action.

DATED: October 1, 1984

GREENE, O'REILLY, AGNEW
& BROILLET

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

EXHIBIT "A"

DECLARATION OF JOHN SUTHERLAND

I, John Sutherland, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California, including the United States District Court. I am an attorney at the law offices of Greene, O'Reilly, Agnew & Broillet, attorneys of record for the plaintiff herein. If called to testify regarding the matters set forth herein, I could and would competently do so.

On or about August 20, 1984, I attended the hearing of the summary judgment motion presented to this court by the defendant, FORD MOTOR COMPANY. Defendant's motion was granted and entered on August 27, 1984.

At the hearing of said motion, it was my understanding and belief that summary judgment was granted in its entirety to FORD MOTOR COMPANY only. It was presented to the court, by way of plaintiff's opposing papers as well as my oral testimony, that at least three additional defendants were necessary to this action. This declarant specifically requested if the summary judgment affected only FORD MOTOR COMPANY and received an affirmative response. Based upon this information and belief, plaintiff prepared his moving papers requesting Joinder of these additional parties, Leave to amend his complaint,

and Remand of this action to the Superior Court of the State of California, which is the proper forum for this lawsuit.

As argued at the hearing of the summary judgment motion, plaintiff is confident that the named potential defendants are, in part, liable for injuries sustained by the plaintiff. It was not until after the filing of defendant's motion for summary judgment that plaintiff became aware of the existence of Cty Ford Company, the distributor of the subject vehicle. Discovery by way of subpoena duces tecum re deposition of the custodian of records of City Ford was not scheduled to be received until on or before September 12, 1984, *after* the hearing of FORD's motion for summary judgment.

Based on the belief that this court granted summary judgment to FORD MOTOR COMPANY *only* and not to the potential defendants named in plaintiff's opposing papers, declarant respectfully requests that this court re-open its order granting summary judgment to the defendant, FORD MOTOR COMPANY, and allow the plaintiff to join the other necessary parties in this action, file its amended complaint, and remand this matter to the Superior Court of the State of California so as to avoid undue hardship, injustice and prejudice to the plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of October, 1984, at Los Angeles, California.

GREENE, O'REILLY, AGNEW
& BROILLET

/s/ By John Sutherland

JOHN SUTHERLAND
Declarant

EXHIBIT "B"

[July 9, 1984, correspondence, see at pp. 109-110.]

EXHIBIT "C"

[Notice of Taking Deposition, Deposition Subpoena and
Declaration of Timothy J. Wheeler,
filed August 17, 1984, see at pp. 120-124.]

DECLARATION OF TIMOTHY J. WHEELER

I, Timothy J. Wheeler, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California, including the United States District Court. I am an attorney at the law offices of Greene, O'Reilly, Agnew & Broillet, attorneys of record for the plaintiff herein. I am the attorney principally responsible for the handling of the matter of *Bryant v. Ford Motor Company* and if called to testify regarding the matters set forth herein, I could and would competently do so.

On or about August 20, 1984, this court entertained defendant's, FORD MOTOR COMPANY, motion for summary judgment and entered its order ruling in favor of the defendant on August 27, 1984.

On or about September 24, 1984, this court denied a hearing of plaintiff's motions to (a) Join additional party defendants, (b) Amend plaintiff's complaint, and (c) Re-

mand this matter to the Superior Court. This declarant understands from John Sutherland of this office who attended the hearing of these motions that the papers were not considered due to the fact that the case of *Bryant v. Ford Motor Company* has been dismissed in its entirety pursuant to the court's order granting summary judgment to FORD MOTOR COMPANY on August 27, 1984.

As the plaintiff in this action has sustained severe and permanent disabling bodily injury including paralysis and back injuries requiring five radical surgeries, it would create an undue hardship and prejudice to the plaintiff to deny him his day in court with regard to the parties liable for these injuries. It would cause further hardship and prejudice to the plaintiff to await the result of an appeal of this court's granting of FORD MOTOR COMPANY's Summary Judgment motion, therefore plaintiff requests relief from this court's order for the sole purpose of allowing plaintiff to name additional parties, including but not limited to (1) City Ford Company, located in Los Angeles, California, (b) Grumman-Olson Company, located in Los Angeles, California, (3) General Seat and Sash Company, located in Tompton, Pennsylvania.

(d) The identity of the person or persons or entities responsible for the design, manufacture, implementation and assembly of the defective seat restraint system are unknown to the plaintiff at this time, however, based on information and belief, plaintiff understands that this company is located in Pacoima, California, however a final determination has not been made due to lack of evidence.

From the outset of this lawsuit, plaintiff has conducted a diligent investigation into the causes of this accident

and the parties responsible therefor. At the time of filing of plaintiff's complaint, plaintiff was aware only of FORD MOTOR COMPANY as a potential defendant in this lawsuit. Due to the lack of documentation, inadequate identification markings on the subject vehicle, destruction of records, etc., it was impossible for plaintiff to determine at the time of the filing of this lawsuit what other parties were responsible for plaintiff's injuries. Therefore, plaintiff filed his complaint naming FORD MOTOR COMPANY as the only defendant before the one year statute of limitations ran.

At the time of the filing of defendant's motion for summary judgment, plaintiff did not suddenly come up with the names of additional non-diverse parties in an effort to save his case, as has been alleged. As evidenced by the letter received July 10, 1984, and attached hereto as Exhibit "B", it was not until that time that plaintiff discovered the identity and liability of City Ford Company. Plaintiff is still in the process of attempting to determine the manufacturer, designer, assembler and implementer of the defective seat restraint system into the subject vehicle, but has been unsuccessful to date. However, in the best interests of the plaintiff, it is the obligation of this declarant to continue his investigation until all liable parties are discovered. To dismiss plaintiff's action at this point in time as against other responsible defendants is highly prejudicial to the plaintiff and creates an undue hardship to him. To date, plaintiff has sustained tens of thousands of dollars in medical bills for which he is responsible. This accident was no fault of the plaintiff and those parties liable for his permanent injuries and

expenses should be forced to compensate the plaintiff based on the evidence.

This lawsuit is a mere seven months old. As FORD MOTOR COMPANY has destroyed all documentation with regard to the chassis of the subject vehicle, the plaintiff is forced to go elsewhere for information regarding the design, manufacture and assembly of the subject vehicle and its component parts. Although discovery and investigation had been ongoing for five months, it was not until July that plaintiff first became aware of a non-diverse defendant. Had plaintiff known at the time of the filing of this lawsuit, he would surely have named City Ford Company as the distributor of the subject vehicle.

Based on this notice of motion, the motion itself, the declaration of John Sutherland, this declaration, and the memorandum of points and authorities contained herein, plaintiff respectfully requests that this court reconsider its decision to close this lawsuit entirely, prohibiting the plaintiff from seeking redress for his terrible injuries by reopening its judgment of August 27, 1984. Plaintiff further respectfully requests that this court then consider plaintiff's motions to (a) Join additional party defendants, (b) Amend his complaint, and thereafter (c) Remand this matter to the Superior Court, as the Superior Court truly is the proper forum for this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of September, 1984, at Los Angeles, California.

GREENE, O'REILLY, AGNEW
& BROILLET
By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Declarant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 84-2049 PAR

Date 9/28/84

Title Gary Bryant -v- Ford Motor Company

DOCKET ENTRY

PRESENT:

HON. PAMELA ANN RYMER, JUDGE

Linda Orona

Deputy Clerk

No Appearance

Court Reporter

ATTORNEY PRESENT FOR PLAINTIFFS:

Not Present

ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

PROCEEDINGS:

Judgment was entered for the sole defendant in this case, Ford Motor Co., on August 27, 1984. On August 29, 1984 plaintiff filed a "motion to remand" to the State Court. Because the Court has no jurisdiction over the action except pursuant to FRCP 60(b), no action will be taken by the Court on the instant motion.

cc: counsel of record.

Initials of Deputy Clerk LO

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Caption omitted in printing)

No. 84-6389
DC CV-84-2049 PAR
Central California

ORDER

(Filed November 8, 1984)

On November 2, 1984 a Prebriefing Conference was held before Conference Attorney Joshua R. Steinhauer. Appellant was represented by George Rosenberg. Appellee was represented by Kurt Osenbaugh.

This appeal is stayed for 30 days. Upon expiration of the stay appellant's counsel shall inform the court in writing of the status of the case and shall indicate that he will be filing a motion for limited remand, request a short continuance of the stay or request the scheduling of a further prebriefing conference, as appropriate.

This order is subject to reconsideration by a judge if any objection is filed within 10 days of the entry of the order.

FOR THE COURT:
By , s/ Joshua R. Steinhauer
Joshua R. Steinhauer
Conference Attorney

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

NO. CV 84-2049-PAR (MCx)

ORDER

(Filed November 21, 1984)

On August 27, 1984, judgment was entered for the sole named defendant in this action, Ford Motor Company. Plaintiff now moves the Court to set aside the judgment under Fed.R.Civ.P. 60(b)(6) in order for plaintiff to name additional defendants. Alternatively, plaintiff moves to have the Court reconsider its ruling under Local Rule 7.16. After carefully reviewing the memorandum and affidavits submitted by plaintiff, the Court waives oral argument pursuant to Local Rule 7.11.

In moving for relief from judgment under Fed.R.Civ.P. 60(b)(6), plaintiff does not challenge the entry of summary judgment in favor of Ford Motor Company. Instead, plaintiff seeks to have the judgment set aside only insofar as is necessary for plaintiff to name additional defendants and to have the case remanded to state court on the ground that the new defendants destroy the Court's diversity jurisdiction. Plaintiff's Notice of Motion, p. 2.

Although plaintiff argues that "undue hardship and injustice" would result from denying his motion, plaintiff has failed to indicate how the entry of judgment in favor of Ford has prejudiced plaintiff's ability to sue other parties in state court. Bringing suit against those parties depends upon California's statute of limitations, its tolling provisions, and the diligence of plaintiff's counsel. The

Court's entry of judgment in favor of an unrelated party does not affect these rights. Plaintiff's argument that judgment was entered "only" as to the named defendant fails to appreciate the absence of *doe* pleading as a part of federal practice.

Plaintiff's motion for reconsideration does not satisfy Local Rule 7.16's requirement that the moving party show (a) a material difference in fact or law; (b) the emergence of new facts or a change of law; or (c) a manifest showing of a failure to consider material facts. Plaintiff argues that new evidence has come to light revealing the identity of *doe* defendants who, if joined prior to the defendant's motion for summary judgment, would have destroyed the complete diversity of the parties. From the face of the affidavits submitted by plaintiff, it is clear that such information was available to plaintiff long before the hearing on the motion for summary judgment. On July 10, 1984, plaintiff "discovered the identity and liability of City Ford Company," one of the three California companies that plaintiff now seeks to join as additional defendants. Wheeler Aff., ¶ (d). The motion for summary judgment was not heard until August 20, 1984, and the Court's decision was not filed until August 27, 1984. During that month and a half, plaintiff failed to join City Ford as a defendant or to move for remand to state court. Plaintiff cannot now characterize the identity and liability of in-state defendants as "new" evidence justifying reconsideration under Local Rule 7.16.

Accordingly, plaintiff's motion to reconsider and motion to set aside judgment are DENIED.

DATED: November 20, 1984.

/s/ Pamela Ann Rymer
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE PAMELA ANN RYMER,
JUDGE PRESIDING

(Caption omitted in printing)

NO. CV 84-2049-PAR

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA

DECEMBER 20, 1984

Elaine J. Cohen, CSR 2706
Official Court Reporter
442-A United States Courthouse
312 North Spring Street
Los Angeles, California 90012
(213) 680-1639

APPEARANCES:

FOR THE PLAINTIFF:

Green, O'Reilly, Broillet, Paul,
Simon, McMillan, Wheeler & Rosenberg
By: John Sutherland
Steve Wilson
816 South Figueroa Street
Los Angeles, California 90017-2516
(213) 482-1122

FOR THE DEFENDANT:

McCutchen, Black, Verleger & Shea
By: Richard A. Goette
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400

LOS ANGELES, CALIFORNIA; THURSDAY, DE-
CEMBER 20, 1984; 4:30 PM

THE CLERK: Civil 84-2049, Gary Bryant versus
Ford Motor.

Counsel, state your appearances, please.

MR. SUTHERLAND: John M. Sutherland appearing for the plaintiff.

MR. WILSON: Steve Wilson for the plaintiff, also, your Honor.

MR. QUIGLEY: Your Honor, I'm Mark Quigley, the law clerk for Timothy Wheeler. I came in his behalf, since he is attending the MacMartin hearing and surely couldn't make it and apologizes to the court.

MR. GOETTE: Richard Goette, McCutchen, Black, Verleger & Shea, appearing on behalf of the Ford Motor Company.

THE COURT: Mr. Sutherland, I guess this is a conference at your request.

MR. SUTHERLAND: Yes, your Honor. The situation—and again, Mr. Wheeler does apologize. He attempted to avoid having to go to the MacMartin matter but, unfortunately, since his children were involved, the therapist indicated that it was necessary that he be present, and I am appearing in his stead.

With reference to the incident matter, it has come to the attention of the plaintiff through the appellate court that because of certain problems with the timing of the order in this case on motion for reconsideration, that it is necessary and desirable that a partial remand be made in this matter so that the court may properly of jurisdiction. If I may explain briefly, your Honor. When the motion was originally heard for reconsideration, the matter had already been taken up by the court of ap-

peals, and according to the cases and according to the court of appeals, technically the court did not have jurisdiction at that time; therefore, they indicated that they would entertain and grant a motion for partial remand so that the matter could be properly heard by this court, and it is our understanding of the position of the rules of this court that it is necessary and proper that we appear before you in form of a status conference in order that this matter may be conveniently scheduled and arranged according to the calendar and procedures of this court.

THE COURT: All right. Do you want a date to hear that?

MR. SUTHERLAND: Yes. Your Honor, basically the position that we are taking—in an effort to remind your Honor of what is involved in this, this is a matter of a paraplegic who—

THE COURT: Yes. I understand that. What has happened is that the court of appeals said that I didn't have jurisdiction because the notice of appeal had already been filed when I rendered my decision on the motion to reconsider.

MR. SUTHERLAND: Precisely.

THE COURT: I now have jurisdiction to do so.

MR. SUTHERLAND: It will grant, it is stated, a motion for partial remand.

THE COURT: It has not done so.

MR. SUTHERLAND: It has not done so. It will do so.

THE COURT: All right. When I receive the word that partial remand has been accomplished, then I will enter the ruling that I made in connection with the motion to reconsider.

MR. SUTHERLAND: We would request, your Honor, the opportunity to place new papers before the court on certain important matters that we think ought to be brought to your Honor's attention which might short circuit matters in the interest of judicial economy.

THE COURT: Well, Mr. Sutherland, I am just, I must say, very hard pressed to understand what your position is. You have every opportunity in the world to plead against whomever you wish in state court. We're not writing you out of any of claim that you have to make against the—whatever the local Ford agency is and anyone else that you think is involved. But Doe pleading is not appropriate in federal court. You are absolutely correct in saying that the Ford Motor Company was the only person against whom my motion ran, because it's the only party that's recognized in this court.

MR. SUTHERLAND: The problem, your Honor, is unless and until—We are in a conundrum at this point, your Honor.

THE COURT: Why?

MR. SUTHERLAND: Because of the fact that apparently the action remains removed to the federal court, there is no pending state action as we presently understand.

THE COURT: But there is nothing to keep you from filing a state action except just typing it and signing it and filing it up the hill.

MR. SUTHERLAND: The problem there, of course, is that when this action was removed, it was timely filed, and there is some question as to whether an action presently filed would be timely.

THE COURT: Well, if you get on it, there is not going to be, but if you sit on it, there may very well be. Customarily when one case is pending in one court and that court decides that it can't hear the case or it makes a disposition of that case, there is a little period of grace when you can file it in some other court. But, you know, that option is up to you. I notice that one of the people that you want to bring in is a Pennsylvania or some other corporation. I have forgotten the name of people now, but it's back East some place. And you've got two local people. I mean regardless—maybe I was in error. Maybe the court of appeals will say that my summary judgment shouldn't be granted, but regardless of that, you ought to protect your rights by filing an action against parties who were not before me in state court.

MR. SUTHERLAND: Well, the problem with that, your Honor, is the timeliness of the state court.

Now, is it my understanding, then, that the court has essentially remanded the balance of the case back to the state court?

THE COURT: Mr. Sutherland, there is no balance of this case to remand. There is no such thing as a Doe in this court. It is not recognized in federal court. There

is nothing left of this case to send back to state court. I dealt with the only case that in front of me, which was a case against the party which had been named and served, and that's the Ford Motor Company. Now, if I am reversed by the court of appeals on summary judgment, I will still only have one case, and the only case that I will have will be a case against the Ford Motor Company.

MR. SUTHERLAND: Well, you see, your Honor, the problem we have is this: As I have indicated, we have a paraplegic client. We also have a circumstances where under Rule 11, we were required to exercise certain care before bringing in a party, lest it be found that we did not, as was the case with the City Ford Agency, have adequate evidence of participation, be accused of misjoinder, and lose the right to deal with that party for all time; therefore, we, in expeditious fashion, as I think the court is aware, propounded proper legal process to them to determine their participation or lack thereof. When we found that they had destroyed all their records, realizing that we had no other option, we then were in position under Rule 11 to proceed. Until we did that, we could have been accused of misjoinder and we would have essentially lost the right to that party for all time.

The effect of what the court has done is to leave us in a twilight zone, a vacuum. We neither have, apparently, a position here and we are uncertain of our standing in state court as well.

THE COURT: Well, I just don't know what else I can say. My advice, and it's worth exactly what free legal advice generally is worth, particularly from someone who

is no longer admitted to practice in the bar of this state, is that you file in the state court.

MR. SUTHERLAND: Your Honor, may we impose on the court to this extent? May we place before the court upon the partial remand additional legal papers to explain our position clearly, concisely, and completely?

THE COURT: Mr. Goette?

MR. GOETTE: Yes. I would just like to advise the court that I'm here only as an accommodation to opposing counsel only because the court has been kind enough to set some time aside. We don't think this court has jurisdiction. The chronology is helpful here. Let me just run through it to refresh your Honor's recollection.

The motion for summary judgment was granted August 20. On August 27, final judgment was entered as to the only defendant in that case. As of that time, there was no opportunity to remand this case back down to state court. Remand was proper at any time up until the judgment was entered. There followed a series of motions. There was a motion apparently for leave to remand the case two days after the judgment was entered. I received no notice of that motion. I only heard about that motion through the courtesy of the court's ruling. Another motion was filed thereafter. And the court, by the way, properly ruled on it, in our opinion, that there was no subject matter jurisdiction to hear a motion for reconsideration. Plaintiff then filed on October 4, after their notice of appeal had been filed, a motion for relief under Rule 60(b), and this court denied that motion.

Now plaintiffs are trying to substitute their rights under Rule 60 for their appellate rights. Either they want

to take this case up on appeal or they don't. But there is no twilight zone. They simply have to make a decision as to what they want to do.

THE COURT: I just don't know what I can do in that regard. I mean I've done what I can do. If the case comes back to me for some limited purpose of entering my ruling at the right time, I can do that.

MR. GOETTE: As I understand it, your Honor, the rule in this circuit is that under Rule 60, a party can petition the court and ask whether they are going to entertain or grant the motion for—to set aside the judgment under Rule 60(b).

Now, in situations where a notice of appeal has been filed and a motion to set aside the judgment under Rule 60(b) is then filed and is argued and the court rules on it, there are cases in this circuit whereby the Ninth Circuit will treat that as a request to remand, depending—you know, if the court has denied the motion, they can seek a remand on that, and the appellate court can consider it. There is no reason to keep coming back before the district court and trouble your Honor with this case. This case has been briefed and argued, and the only issue here is, number one, on the summary judgment whether that was proper or not and then, number two, whether plaintiff had some rights under Rule 60(b), and that has been decided.

THE COURT: I just can't—you know, Mr. Sutherland, if I get something back from the Ninth Circuit that tells me to do something, I will say "Yes, sir" and do it, but until that happens, it is my view that I was through with the case.

MR. WILSON: May I speak to that, your Honor?
Steve Wilson.

THE COURT: Yes.

MR. WILSON: With regard, also, to what Mr. Goette was saying, the court of appeals referred us to the case of Smith versus Lujan, 588 F.2d 1304. In that case, and that is why we are here, the court instructed that the proper relief for a plaintiff under the precise circumstances we have here is to ask the district court if it will—if it wished to entertain the motion that—which was made in the absence of jurisdiction. We are here, then, to see if it is possible to reemphasize the need for our motion that the court ruled on on November 21st. I believe there are two points—

THE COURT: What you are asking me is if I will reentertain the motion?

MR. WILSON: Yes, your Honor. And at that point, then, we are to go back to the court of appeals and move for that partial remand that Mr. Sutherland referred to.

THE COURT: Well, I don't see any reason for me to reentertain it.

MR. WILSON: Your Honor, I believe there are two things that were perhaps not emphasized with enough clarity. The first is the court—the word identity that the court seized on, and that has—it was an unfortunate word. We had no—if the court would look in all of our other papers, the—we never, ever said we knew of the potential liability—we said we knew of the potential liability, not the liability of City Ford. At that point, had the

court not focused so decisively on the word "liability," I believe we might have had a better standing to ask for joinder and possible remand.

THE COURT: Well, I don't even know what I'm supposed to do right now, frankly. I mean an oral request to do something that—I don't even know what has been said to you by the Ninth Circuit. If you want me to do something, put it in writing and I will respond to it.

MR. GOETTE: Could I request, your Honor, that any papers that are served this time by plaintiff's counsel be served upon me?

MR. SUTHERLAND: I will be done. I apologize if it was improperly not done.

The final point, your Honor, is simply that we believe we have followed the court rules, especially the court's Rule 11 with regard to the dangers of service of process where bringing parties into a lawsuit without proper investigation is, to say the least, frowned upon in this court. And we feel that our position was that we are in a conundrum. On the one hand, we did the investigation, and yet on the other hand, our client may suffer because we did the investigation.

THE COURT: All right. Well, if you want me to do something, just put the request in writing so that I clearly understand what it is that I am being asked to do and then I can make a response to you in writing.

MR. SUTHERLAND: That will be done immediately, your Honor.

THE COURT: All right.

MR. SUTHERLAND: I thank you, your Honor.

MR. GOETTE: Thank you, your Honor.

Mr. Wilson: Thank you, your Honor.

I, Elaine J. Cohen, CSR 2706, do hereby certify that the foregoing is a true and correct transcription of my stenographic notes.

Dated this 18th day of January 1985

Elaine J. Cohen, CSR 2706

GREENE, O'REILLY, BROILLET, PAUL, SIMON,
McMILLAN, WHEELER & ROSENBERG

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Los Angeles, California 90017-2516

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Attorneys for Plaintiff-Appellant

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Caption omitted in printing)

No. 84-6389

DC# CV-84-2049 PAR

Central California

NOTICE OF MOTION AND
MOTION FOR LIMITED REMAND

(Filed January 11, 1985)

TO ALL PARTIES HEREIN AND TO THEIR
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to this court's order filed November 8, 1984, and attached hereto as Exhibit "A", plaintiff-appellant will move this court for an order for limited remand granting partial jurisdiction to the United States District Court, Central District, in the matter of *Gary Bryant v. Ford Motor Company*, case no. C 84 2049-PAR. Granting partial jurisdiction to the District Court, and particularly to the Honorable Pamela A. Rymer, will allow the court to consider plaintiff's notice of motion and motion for relief from judgment, and thereafter properly enter its order with regard to that motion. Plaintiff's original motion for relief from judgment was filed October 4, 1984, and the court's order filed thereafter on November 21, 1984. Copies

of both plaintiff's motion and the court's order are attached hereto as Exhibits "B" and "D".

In conjunction with this motion for limited remand, plaintiff has filed his motion to vacate the court's order filed November 21, 1984, in response to plaintiff's motion for relief from judgment of order, as said order was improperly entered as the District Court lacked jurisdiction in which to do so.

This motion is based on this notice of motion, the pleadings and documents on file herein, the memorandum of points and authorities attached hereto, the declaration of Timothy J. Wheeler and John Sutherland, and any oral argument which may be allowed at the hearing of this motion.

DATED: January 9, 1985

GREENE, O'REILLY,
BROILLET, PAUL, SIMON,
McMILLAN, WHEELER
& ROSENBERG

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff-
Appellant, GARY BRYANT

MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF THE CASE

This action arises out of a single vehicle accident which occurred on or about March 1, 1983. As a result of this accident, plaintiff sustained severe and permanent bodily injury, including but not limited to paralysis of the right

leg and major back injuries requiring five radical surgeries. Thereafter, on January 27, 1984, plaintiff filed his complaint for damages against the only known defendant at that time, FORD MOTOR COMPANY and DOES 1 through 100. On or about July 9, 1984, defendant, FORD MOTOR COMPANY, filed its motion for summary judgment. Said motion was heard on August 20, 1984, and granted in favor of FORD MOTOR COMPANY.

On or about August 27, 1984, the Honorable Pamela A. Rymer of the District Court of California, Central District, entered judgment in favor of FORD MOTOR COMPANY, dismissing FORD MOTOR COMPANY from that lawsuit. It was understood by counsel for the plaintiff at the hearing of this motion on August 20, 1984, that summary judgment was granted as to FORD MOTOR COMPANY only, and that plaintiff would be allowed to name additional defendants in that matter based on information determined through ongoing discovery and investigation. (See Declaration of John Sutherland attached hereto as Exhibit "C".) Based on the belief that summary judgment was granted as to FORD MOTOR COMPANY only and that plaintiff would be allowed to name additional defendants as their degree of liability was verified by investigation and discovery, plaintiff filed his Motion For (Joinder), (b) Leave To File First Amended Complaint, and (c) Remand. Said motions were set to be heard on September 24, 1984, at 10:00 a.m., before the Honorable Pamela A. Rymer.

On or about September 24, 1984, attorney John Sutherland of this office attended the scheduled hearing of the

above-mentioned motions. At that time, Mr. Sutherland was informed that the district court would not consider plaintiff's motions because of the granting of the summary judgment as to FORD MOTOR COMPANY and in light of the fact that FORD MOTOR COMPANY was the only named defendant at that time, the entire case had been closed and taken off the court's active list.

On or about October 4, 1984, plaintiff filed his Notice of Motion and Motion for Relief From Judgment or Order Pursuant to *F.R.C.P.* Rule 60(b)(6), or in the alternative, a Motion for Reconsideration Pursuant to *Local Rule* 7.16. A copy of this motion is attached hereto as Exhibit "B". Said motion was to be heard on October 29, 1984, however the court did not enter its ruling until on or about November 21, 1984.

Prior to the district court's determination with regard to plaintiff's motion for reconsideration, plaintiff determined that the district court was without jurisdiction to consider plaintiff's moving papers and to subsequently make a judgment thereon as plaintiff had filed his Notice of Appeal from the summary judgment Order on or about September 26, 1984. (See *Smith v. Lujan*, 588 F.2d 1304 (1979); *Crat o, Inc. v. Intermark, Inc.*, 536 F.2d 862 (1976).)

As a result of finding that the district court was without jurisdiction, plaintiff scheduled a status conference set to be conducted on December 20, 1984, at 4:30 p.m. before the Honorable Pamela A. Rymer. All parties were notified as well as Joshua R. Steinhauser, of the U.S. Court of Appeals, Ninth Circuit, by way of correspondence dated December 3, 1984. (A copy of this letter is attached hereto

as Exhibit "E".) By way of this letter, plaintiff requested an additional thirty day stay of the appeal of the district court's order granting summary judgment in favor of FORD MOTOR COMPANY. The stay was requested with the hope that other issues regarding other potential defendants could be resolved thereby avoiding the appeal. Said stay was requested up to and including a date on or about January 7, 1985.

At the December 20, 1984, status conference, Judge Rymer indicated that she would be willing to again review plaintiff's motion for Reopening of Judgment or Order and Motion for Reconsideration if the Court of Appeals restored partial jurisdiction allowing the district court to do so. As such, plaintiff has filed this Notice of Motion and Motion For Limited Remand in an effort to restore partial jurisdiction to the district court so that the Honorable Pamela A. Rymer may again review plaintiff's motion for reconsideration as well as supplemental papers which plaintiff intends to file pursuant to *Federal Rule of Civil Procedure* § 15. (A copy of plaintiff's supplemental papers is attached hereto as Exhibit "F".)

II

THE DISTRICT COURT HAD NO JURISDICTION TO MAKE AN ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT AFTER NOTICE OF APPEAL HAD BEEN FILED IN ABSENCE OF A REMAND FROM THE COURT OF APPEALS.

On or about August 27, 1984, the Honorable Pamela A. Rymer entered summary judgment in favor of FORD MOTOR COMPANY in the case of *Gary Bryant v. Ford Motor Company*, case no. CV 84-2049-PAR. On or about

September 26, 1984, plaintiff timely filed his Notice of Appeal of the district court's order granting summary judgment, thereby placing jurisdiction over this matter with the United States Court of Appeals, Ninth Circuit. At a December 20, 1984, status conference, the Honorable Pamela A. Rymer indicated that she would be willing to reconsider plaintiff's Motion For Relief From Judgment or Order, Or, In the Alternative, Plaintiff's Motion For Reconsideration Pursuant to *Local Rule* 7.16. (See Declaration of John Sutherland.) The proper procedure as set forth in the case of *Crateo, Inc. v. Intermark, Inc.*, 536 F.2d 862 (9th Circuit 1976) is for the plaintiff to move this court for an order granting limited remand of the case which would in effect give partial jurisdiction to the U.S. District Court to reconsider plaintiff's Motion to Reopen Judgment or Order, as well as the plaintiff's supplemental papers to be filed in support of that motion. *Smith v. Lujan*, 588 F.2d 1304 (9th Circuit 1979).

Granting of this motion will allow the district court to obtain proper jurisdiction in which to thereafter properly review plaintiff's motions, and thereafter enter its order in response thereto. The purpose of plaintiff's Motion for Reopening of Judgment or Order is to allow the district court to make a ruling with regard to plaintiff's motions for (a) amendment of his complaint, (b) joinder of additional potential defendants, and (c) remand of this matter to the superior court level based on lack of diversity. It would create undue hardship and prejudice to the plaintiff if he were not allowed to pursue other potential defendants unknown at the time of the summary judgment granted in favor of FORD MOTOR COMPANY as he is precluded from entertaining additional actions at the state

court level due to the expiration of the one year statute of limitations. (See Declaration of Timothy J. Wheeler.

Wherefore, plaintiff respectfully requests that this court grant plaintiff's motion for limited remand, thereby transferring partial jurisdiction back to the district court, allowing the court to properly consider plaintiff's moving papers as well as plaintiff's supplemental papers so that plaintiff may thereafter amend his complaint to join additional defendants and pursue this matter at the state court level.

DATED: January 9, 1984

Respectfully submitted,

GREENE, O'REILLY, BROILLET, PAUL,
SIMON, McMILLAN, WHEELER & ROSENBERG

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff-
Appellant, GARY BRYANT

DECLARATION OF TIMOTHY J. WHEELER

I, Timothy J. Wheeler, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California, including the United States District Court. I am an attorney at the law offices of Greene, O'Reilly, Broillet, Paul, Simon, McMillan, Wheeler & Rosenberg, attorneys of record for the plaintiff herein. I am the attorney principally responsible for the handling of the matter of *Bryant v. Ford Motor Company*, and if called upon to testify regarding matters set forth herein, I could and would competently do so.

I have read the "Statement of The Case" included herein as Part I of the Memorandum of Points and Authorities, and attest to its accuracy in lieu of reiterating the sequence of events which have transpired in this action.

The plaintiff in this action has been severely injured through no fault of his own. As a result of the summary judgment motion granted in favor of FORD MOTOR COMPANY and entered on August 27, 1984, it appears that plaintiff may be forever barred from pursuing other potential tortfeasors for compensation for his grave and serious injuries. As stated, this accident occurred on March 1, 1983. On January 27, 1984, well within the mandatory one year statute of limitations period, plaintiff filed his summons and complaint in Los Angeles County Superior Court, Central District. In that action, plaintiff named FORD MOTOR COMPANY, the only known defendant at that time, and Does 1 through 100.

On March 29, 1984, and after the March 1, 1984, one year statute of limitations period had expired, defendant, FORD MOTOR COMPANY, filed its petition for removal of this matter to the district court based on diversity jurisdiction. Afterwards, by way of answers to interrogatories and FORD MOTOR COMPANY's motion for summary judgment, particularly the affidavit of James I. Scott, design analysis engineer for FORD MOTOR COMPANY, plaintiff determined that FORD MOTOR COMPANY was not solely liable for his injuries, and as such plaintiff conducted additional discovery and investigation to determine those other possible tortfeasors. However, due to registration and identification problems with the subject vehicle, destruction of records and lack of proper documentation, plaintiff was unable to determine the identity of

all other possible tortfeasors until a time after the district court granted summary judgment in favor of FORD MOTOR COMPANY. Plaintiff became aware that other possible tortfeasors existed, however, due to lack of information and documentation, plaintiff could not accurately determine the extent or nature of the liability of these possible tortfeasors. For plaintiff to have joined other possible tortfeasors, particularly other California defendants, based solely on a reference to their potential involvement in this matter, would have clearly been considered misjoinder under *F.R.C.P.* § 11, § 19 and § 20 as an effort to defeat diversity. In addition, for plaintiff to have attempted to join City Ford Company as a defendant on or about July 10, 1984, would have been in clear violation of Rule 11, as plaintiff's counsel did not have sufficient knowledge, information or belief that there was good ground to support plaintiff's joinder of City Ford Company as a defendant until further discovery and investigation were conducted.

Due to the fact that summary judgment was granted in favor of the sole defendant known to the plaintiff at the time of filing of this action, and due to the fact that the one year statute of limitations period has run in the Superior Court, [although plaintiff diligently filed his causes of action against unknown Doe defendants prior to the one year statute of limitations period] the court has apparently barred the plaintiff from pursuing claims against possible tortfeasors he now believes to be liable, namely: City Ford Company, Grumman-Olson Company, General Seat and Sash Company, and possibly others still unknown to plaintiff at this time.

As plaintiff was diligent in filing his complaint for damages against FORD MOTOR COMPANY and other unknown defendants before the one year statute of limitations period expired, plaintiff should not be precluded from pursuing claims against possible tortfeasors he has identified through discovery and investigation after the one year statute of limitations period expired, or because summary judgment was granted to FORD MOTOR COMPANY only; the only known defendant at that time.

Therefore, plaintiff respectfully requests that this court grant this motion for limited remand allowing the district court to reconsider plaintiff's motions previously filed, allowing the plaintiff to pursue claims against other possible tortfeasors so that he may be compensated for his severe and permanent disabling injuries.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of January, 1985, at Los Angeles, California.

GREENE, O'REILLY, BROILLET, PAUL,
SIMON, McMILLAN, WHEELER & ROSENBERG
By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Declarant

DECLARATION OF JOHN SUTHERLAND

I, John Sutherland, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California, including the United States District Court. I am an attorney at the law offices of Greene, O'Reilly, Broillet, Paul, Simon, McMil-

lan, Wheeler & Rosenberg, attorneys of record for the plaintiff herein. I am the attorney who appeared at the status conference scheduled on December 20, 1984, before the Honorable Pamela A. Rymer, United States District Judge, Central District. In my company were attorney Steven Wilson, of this office, and Mark Quigley, law clerk, also of this office.

At the December 20, 1984, status conference indicated above, I indicated to the court that plaintiff had determined that the court was without jurisdiction to enter its order filed November 21, 1984, and attached hereto as Exhibit "C". The Honorable Pamela A. Rymer indicated that she would be willing to reconsider plaintiff's moving papers if in fact the Court of Appeals, Ninth Circuit, granted her the proper jurisdiction in which to do so. As such, plaintiff has filed this motion requesting the Court of Appeals to do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of January, 1985, at Los Angeles, California.

GREENE, O'REILLY, BROILLET,
PAUL, SIMON, McMILLAN,
WHEELER & ROSENBERG

By /s/ John Sutherland
JOHN SUTHERLAND
Declarant

EXHIBIT "A"

[U.S. District Court Order filed November 8, 1984,
see at p. 172.]

EXHIBIT "B"

[Notice of Motion and Motion for Relief from
Judgment of Order, filed October 4, 1984,
see at pp. 156-158.]

EXHIBIT "C"

[Declaration of John Sutherland, see at pp. 165-167;
July 9, 1984 letter, see at pp. 109-110; Notice of
Deposition, Deposition Subpoena and Declaration of
Timothy Wheeler, see at pp. 120-124; September
28, 1984 Order, see at p. 155.]

EXHIBIT "D"

[U.S. District Court Order filed November 21, 1984,
see at pp. 173-175.]

EXHIBIT "E"

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John M. Sutherland

Of Counsel
Harry N. Philo

Administrator
Francis K. Cholko

December 3, 1984

Joshua R. Steinhauer, Esq.
Conference Attorney
U.S. Court of Appeals
Ninth Circuit
P.O. Box 547
San Francisco, CA 94101

Re: *Gary Bryant v. Ford Motor Company*

Dear Mr. Steinhauer:

On November 8, 1984, an order was filed in this matter staying the appeal for thirty days. As we discussed in our telephone conversation last week, plaintiff requests an additional thirty (30) day extension of time up to and including January 7, 1985, before commencing with the appeal. The primary purpose of this request is to allow plaintiff's counsel as well as counsel for Ford Motor Company to participate in a status conference before the Honorable Pamela A. Rymer. The status conference has been agreed to by the court, Richard Goette, counsel for Ford Motor Company, and plaintiff's counsel, and will take place on December 20, 1984, at 4:30 p.m. At that time, counsel hopes to resolve issues, making it unnecessary to go further with our appeal.

If a stay will not be possible or if you have any questions whatsoever, please feel free to contact Timothy Wheeler, of this office, at your convenience.

Thank you for your continuing cooperation.

Very truly yours,
GREENE, O'REILLY, BROILLET,
PAUL, SIMON, McMILLAN,
WHEELER & ROSENBERG

/s/ Mark Quigley
Mark Quigley, law clerk to
Timothy J. Wheeler

MQ:jw

EXHIBIT "G"

CITY FORD

1800 Pasadena Ave. • Los Angeles, California 90031
Telephone: (213) 221-5151

RECEIVED
August 30, 1984

GREENE, O'REILLY, AGNEW & BROILLET

August 29, 1984

Tim Wheeler
Attourney at Law
Los Angeles, California 90017
Subject: Gary Bryant

We are unable to provide any records on the sale of the P500 Van as requested in your subpoena dated August 17, 1984. Our records are not retained for more than three years.

Yours Very Truly,
/s/ Paul Cunningham
Paul Cunningham
Business Manager

(Proof of service omitted in printing)

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

SUPPLEMENTAL DECLARATION OF
TIMOTHY J. WHEELER

PLEASE TAKE NOTICE that on a date yet to be determined, in the courtroom of the Honorable Pamela A. Rymer, U.S. District Judge, 312 North Spring Street, Los Angeles, California 90012, plaintiff, GARY BRYANT, will again request that this court reconsider its Motion for Relief from Judgment or Order (*F.R.C.P.* § 60(b)) or in the Alternative, a Motion for Reconsideration: *Local Rule 7.16*, originally filed on October 4, 1984, which Order was entered on November 21, 1984.

Plaintiff requests that once jurisdiction is granted to the district court by the U.S. Court of Appeals, Ninth Circuit, pursuant to plaintiff's Motion for Limited Remand, that the court entertain plaintiff's Motion for Relief from Judgment or Order, as well as this Supplemental Declaration of Timothy J. Wheeler, as a part of that motion.

DATED: January 11, 1985

GREENE, O'REILLY, BROIL-
LET, PAUL, SIMON, McMIL-
LAN, WHEELER & ROSEN-
BERG

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

MEMORANDUM OF POINTS AND AUTHORITIES

I

"THE SIGNATURE OF AN ATTORNEY CONSTITUTES A CERTIFICATE BY HIM THAT HE HAS READ THE PLEADING; THAT TO THE BEST OF HIS KNOWLEDGE, INFORMATION AND BELIEF THERE IS GOOD GROUND TO SUPPORT IT; AND THAT IT IS NOT INTERPOSED FOR DELAY. IF A PLEADING IS NOT SIGNED OR IS STRICKEN WITH THE INTENT TO DEFEAT THE PURPOSE OF THIS RULE, IT MAY BE STRICKEN AS A SHAM AND FALSE. . ." *Federal Rule of Civil Procedure 11*

As stated in the Declaration of Timothy J. Wheeler attached hereto, on or about July 10, 1984, and for the time period thereafter up to and including August 30, 1984, the plaintiff was without good ground to support a motion to amend his complaint or a motion for joinder of other possible tortfeasors, particularly City Ford Company, and therefore plaintiff cannot be accused of a lack of diligence by not filing said motions on or before the August 20, 1984, hearing of the summary judgment brought by FORD MOTOR COMPANY. Had plaintiff attempted at a time on or about July 10, 1984, when he

first learned of the existence of City Ford Company, to make a motion to amend his complaint and join City Ford Company as a defendant in this action, without sufficient knowledge, information or belief to support said motions, the plaintiff would surely have been in violation of Rule 11, and said actions would have been construed as misjoinder in violation of Rules 19 and 20. This procedure of naming a potential defendant, particularly a resident defendant, without adequate grounds, has been consistently frowned upon by the court as a method of defeating diversity jurisdiction. As such, plaintiff chose to conduct further discovery and investigation before naming City Ford Company as a defendant in this action, and did so by serving a subpoena duces tecum re deposition on the Custodian of Records of City Ford Company in an attempt to determine the nature and extent of their potential liability and affording that entity the opportunity to refute any allegations of possible liability before doing so. It was not until August 30, 1984, after the hearing of the summary judgment motion and after the entry of judgment with regard to that summary judgment motion, did plaintiff discover that City Ford Company was without any documentation whatsoever with regard to the subject vehicle (see Exhibit "G"). As such, plaintiff has given City Ford Company adequate opportunity to defeat allegations that they are liable in part for plaintiff's serious injuries, and City Ford Company has been unable to provide the plaintiff with sufficient documentation or other information which would lead the plaintiff to believe that City Ford Company is not liable in part for plaintiff's injuries. As such, plaintiff should be allowed to pursue the potential liability of City Ford Company by naming them as a defendant in this lawsuit at this time.

DATED: January 11, 1985

Respectfully submitted,
GREENE, O'REILLY, BROILLET,
PAUL, SIMON, McMILLAN,
WHEELER & ROSENBERG

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

DECLARATION OF TIMOTHY J. WHEELER

I, Timothy J. Wheeler, declare and say that:

I am an attorney at law duly licensed to practice before all the courts of the State of California, including the United States District Court. I am an attorney at the law offices of Greene, O'Reilly, Broillet, Paul, Simon, McMillan, Wheeler & Rosenberg, attorneys of record for the plaintiff herein. I am the attorney principally responsible for the handling of the matter of *Bryant v. Ford Motor Company*, and if called upon to testify regarding matters set forth herein, I could and would competently do so.

On or about November 21, 1984, this court entered its Order in response to plaintiff's Motion for Relief from Judgment or Order, or in the Alternative, a Motion for Reconsideration, filed October 4, 1984. However, as indicated in plaintiff's moving papers to the U.S. Court of Appeals, Ninth Circuit, requesting restoration of partial jurisdiction to the district court, this declarant hereby asks that this court reconsider plaintiff's Motion for Relief from Judgment and Motion for Reconsideration once proper jurisdiction has been restored at the district level.

The plaintiff in this action has been severely injured through no apparent fault of his own. As a result of the

summary judgment motion granted in favor of FORD MOTOR COMPANY and entered on August 27, 1984, it appears that plaintiff may be forever barred from pursuing other possible tortfeasors for compensation for his grave and serious injuries.

As stated, this accident occurred on March 1, 1983. On January 27, 1984, well within the mandatory one year statute of limitations period, plaintiff filed his summons and complaint in Los Angeles County Superior Court, Central District. In that action, plaintiff named FORD MOTOR COMPANY, the only known defendant at that time, and DOES 1 through 100.

On March 29, 1984, and after the March 1, 1984, one year statute of limitations period had expired, defendant, FORD MOTOR COMPANY, filed its petition for removal of this matter to the district court based on diversity jurisdiction. Thereafter, on April 4, 1984, defendant FORD MOTOR COMPANY answered plaintiff's complaint.

By way of answers to interrogatories, a vehicle inspection, and FORD MOTOR COMPANY's motion for summary judgment, particularly the affidavit of James I. Scott, design analysis engineer for FORD MOTOR COMPANY, plaintiff determined that FORD MOTOR COMPANY was not solely liable for his injuries, and as such plaintiff conducted further discovery and investigation to determine the identity of other possible tortfeasors. However, due to improper identification of the subject vehicle, lack of proper documentation, and destruction of records by not only FORD MOTOR COMPANY but also City Ford Company, plaintiff was unable to de-

termine the identity of other possible tortfeasors until a time after the district court granted summary judgment in favor of FORD MOTOR COMPANY. A review of plaintiff's opposition to FORD's Summary Judgment Motion clearly indicates that it was plaintiff's contention that granting summary judgment was premature until adequate documentation could be compiled in order to make a determination as to the liability of FORD and other possible tortfeasors.

Although plaintiff became aware that other possible tortfeasors obviously existed, he could not accurately determine the extent or nature of the liability of these possible tortfeasors due to the lack of information and documentation. For plaintiff to have joined other possible tortfeasors, particularly other California defendants, based solely on an inference as to their potential involvement in this matter would clearly have been considered misjoinder under *F.R.C.P.* § 11, § 19 and § 20 as an effort to defeat diversity.

As discussed in plaintiff's Memorandum of Points and Authorities, *Federal Rule of Civil Procedure* § 11 dictates that an attorney not sign any pleading unless, to the best of his knowledge, information and belief, there is good ground to support it. Furthermore, if a pleading is signed with the intent to defeat the purpose of this rule, the pleading may be stricken as sham. For these reasons, plaintiff, in good faith, declined to join City Ford Company as a defendant in this action based solely on the July 9, 1984, letter sent to plaintiff's counsel by attorneys for United Parcel Service.

The July 9 letter indicated that United Parcel Service's remaining records listed City Ford Company in Los Angeles as the distributor of the subject vehicle and further advised that other information in that regard may be found in City Ford's records.

In my earlier declaration dated September 27, 1984, and incorporated as part of plaintiff's Motion for Relief from Judgment or Order filed October 4, 1984, it was erroneously indicated that the plaintiff discovered the identity and "liability" of City Ford Company on or about July 10, 1984, by way of correspondence sent to the plaintiff by the attorneys for United Parcel Service. The July 9, 1984, letter sent by attorneys for United Parcel Service merely mentioned that City Ford Company was the distributor of the subject vehicle, and that plaintiff should seek further verification and documentation of City Ford's involvement from City Ford itself. There was no indication that City Ford Company was liable for plaintiff's injuries. A more accurate statement would have been to declare that upon receipt of the July 9, 1984, letter from counsel for United Parcel Service the plaintiff discovered the identity and *potential* liability of City Ford Company, and the fact that they may be a possible tortfeasor.

In an attempt to comply with the provisions of *F.R.C.P.* §§ 11, 19 and 20, plaintiff served a subpoena duces tecum re deposition on the Custodian of Records for City Ford Company to determine if, in fact, City Ford Company had any involvement in the distribution, installation, design and/or manufacture of the defective seat restraint system and/or seat assembly, and thereby allow City Ford Company the opportunity to refute any allega-

tions of possible liability for this accident. It was not until August 30, 1984, after the granting of the summary judgment in favor of FORD MOTOR COMPANY that plaintiff was informed by City Ford Company that it was no longer in possession of any information or documentation with regard to the subject vehicle in that their record retention policy required that all records be destroyed after three years (see Exhibit "G"). To date, plaintiff is still unable to fully determine the extent of City Ford Company's involvement in the distribution, design, manufacture or installation of the defective parts into the subject vehicle, and therefore to have attempted to join City Ford Company on or about July 10, 1984, just after FORD MOTOR COMPANY filed its Motion for Summary Judgment, would clearly have been considered misjoinder for the sole purpose of defeating diversity, a technique clearly discouraged by the district court, and also a clear violation of *F.R.C.P.* § 11 as plaintiff and his counsel at that time were without sufficient grounds to state that to the best of their knowledge, information and belief, there was good grounds to support motions to amend plaintiff's complaint or joinder at that time.

The purpose of serving the subpoena duces tecum re deposition on the Custodian of Records for City Ford Company was to comply with the provisions of *F.R.C.P.* §§ 11, 19 and 20 by affording City Ford Company the opportunity to refute any allegation of possible liability and avoid attempted joinder of a possible tortfeasor whose involvement was unclear, which would have been an abuse of process exposing plaintiff to a potential malicious prosecution lawsuit.

However, having given City Ford Company the opportunity to refute any allegations of possible liability and given its failure to do so, this declarant can now state to the best of his knowledge, information and belief, that City Ford distributed the subject vehicle and that further discovery in the form of interrogatories and depositions of personnel with City Ford at the time of the distribution of the subject vehicle is the only means by which City Ford's complete involvement with the seat restraint system and seat assembly can be ascertained.

To date, and by means of discovery and investigation, plaintiff has been able to determine that City Ford Company was the possible distributor of the subject vehicle and that General Seat and Sash Company of Tomp-
ton, Pennsylvania, manufactured the seating system incorporated into the subject vehicle. It has been inferred that Grumman-Olson Corporation of California manufactured the body of the vehicle incorporated with the chassis manufactured by FORD MOTOR COMPANY, however no documentation or evidence has yet been produced to verify this information. The only means plaintiff has to determine those parties truly liable for his injuries is to proceed with his lawsuit against these possible tortfeasors to determine what information or knowledge they have with regard to the design, manufacture and installation of the defective seat and seat restraint system incorporated in the subject vehicle. To date, as a result of what appears to be a termination of this lawsuit at the district court level, plaintiff has been unable to determine the designer, manufacturer or installer of the seat restraint system which is alleged to have been, in part, a cause of plaintiff's severe and permanent disabling injuries.

Due to the fact that summary judgment was granted in favor of the sole defendant known to the plaintiff at the time of filing of this action, and due to the fact that the one year statute of limitations period has run in the Superior Court (although plaintiff diligently filed his causes of action against unknown Doe defendants prior to the one year statute of limitations period) the court has apparently barred the plaintiff from pursuing claims against City Ford Company, Grumman-Olson Company, General Seat and Sash Company, and others still unknown to the plaintiff at this time.

As plaintiff was diligent in filing his complaint for damages against FORD MOTOR COMPANY and other unknown defendants before the one year statute of limitations period expired, plaintiff should not be precluded from pursuing claims against defendants he has identified through discovery and investigation after the one year statute of limitations period expired, and after the August 20, 1984, summary judgment determination as to FORD MOTOR COMPANY, only, the only known defendant at that time.

In summary, plaintiff requests this court look at the facts of this case in their entirety and make a determination that is fair and just to all parties involved. The plaintiff was injured through no apparent fault of his own. Obviously, someone is liable for these injuries based on the theory of strict liability. Plaintiff diligently and timely filed his summons and complaint for damages before the one year statute of limitations period expired. However, his complaint was removed to the district court by FORD MOTOR COMPANY after the one year statute of limitations period expired. Thereafter, a summary judgment

was granted in favor of FORD MOTOR COMPANY, apparently barring the plaintiff from pursuing this matter further at the district court level and at the superior court level. Plaintiff cannot now go back to the superior court and file a new action against other possible tortfeasors as the one year statute of limitations period expired on March 1, 1984, before the date FORD MOTOR COMPANY removed this action to the district court.

Therefore, plaintiff respectfully requests that this court grant plaintiff's Motion for Relief from Judgment or Order so that it may thereafter properly rule on plaintiff's motions to (a) amend his complaint, (b) join additional parties, and (c) remand this matter to the superior court. By doing so, the court will have used its discretion to allow the plaintiff to pursue this matter based on the merits rather than to allow those parties responsible for plaintiff's severe and permanent injuries to escape liability, creating only further hardship to the plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of January, 1985, at Los Angeles, California.

GREENE, O'REILLY,
BROILLET, PAUL, SIMON,
McMILLAN, WHEELER
& ROSENBERG

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Declarant

(Certificate of Service omitted in printing)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Caption omitted in printing)

No. 84-6389

DC # CV 84-2049-PAR

Central California

ORDER

(Filed January 22, 1985)

Before: BARNES, Circuit Judge

On December 20, 1984, the district court indicated that it would entertain appellant's motion for reconsideration and for other relief on remand. Accordingly, this case is remanded to the district court for a period of 90 days or until the district court decides appellant's motions, whichever occurs first. On remand, the district court may consider appellant's renewed motion for reconsideration and may consider anew the district court's order of November 21, 1984, which was filed while this appeal was pending and the district court was thereby divested of jurisdiction. The motion to vacate is denied without prejudice to renewal, if necessary, following the remand.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 84-2049 PAR

Date 1/22/85

Title Gary Bryant -v- Ford Motor Co.

DOCKET ENTRY

PRESENT:

HON. PAMELA ANN RYMER, JUDGE

Linda Orona
Deputy Clerk

No Appearance
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Not Present

ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

PROCEEDINGS: MOTION TO RECONSIDER.

For the reasons stated the Court's decision on November 21, 1984, plaintiff's motion to reconsider is *DENIED*.

cc: counsel of record.

Initials of Deputy Clerk: LO

No. 84-6389

In The
UNITED STATES COURT OF APPEALS
For The Ninth Circuit

(Caption omitted in printing)

**APPEAL FROM ORDER
GRANTING SUMMARY JUDGMENT**

**OPPOSITION OF DEFENDANT-APPELLEE
FORD MOTOR COMPANY TO MOTION FOR LIMITED
REMAND AND MOTION TO VACATE;
DECLARATION OF RICHARD A. GOETTE**

(Filed January 22, 1985)

**HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA
600 Wilshire Boulevard
Los Angeles, California 90017
Attorneys for Appellee
Ford Motor Company**

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I. Preliminary Statement

Plaintiff-appellant inexplicably seeks a "limited remand" of this action to somehow allow the lower court to reconsider a motion under Rule 60(b)(6) that was previously considered and denied after the appeal was filed. The relief sought is simply a thinly veiled substitute for prosecuting the pending appeal in an attempt to undo decisions rendered by the lower court with which plaintiff is dissatisfied. The motions are manifestly inappropriate, have caused an unnecessary delay in these proceedings and should be denied. We respectfully submit that the motions are unwarranted and that the reasonable expenses incurred in opposing them should be awarded to defendant-appellee Ford Motor Company ("Ford").

II. Statement of Material Facts

This dispute arises from a relatively uncomplicated personal injury action in which plaintiff contends that on March 1, 1983, while in the course and scope of his employment with United Parcel Service, Inc. and while driving a 1968 truck owned by his employer, he was involved in a single vehicle accident. As a consequence of the accident, plaintiff reportedly sustained certain personal injuries and approximately eleven months later, on January 27, 1984, plaintiff filed a third-party complaint in the Superior Court for the County of Los Angeles, California. That complaint, which contained claims for relief premised upon negligence, breach of warranty and strict liability was served on Ford on March 1, 1984.

In the complaint, plaintiff, a California resident, named Ford as the only defendant based upon plaintiff's appar-

ent belief that the truck was designed or manufactured by Ford. However, there was no indication in the complaint as to the particular basis for plaintiff's claims—merely that the vehicle was a Ford product and was purportedly defective. While the complaint also named Does 1 through 50, plaintiff alleged no facts which identified those defendants, nor did plaintiff allege where any of the Doe defendants were domiciled or resided. Since Ford is incorporated in Delaware and has its principal place of business in Michigan, Ford petitioned for the removal of the action on March 29, 1984, based upon diversity jurisdiction.

Pretrial discovery conducted by Ford ultimately revealed the basis of plaintiff's vague liability contentions. In essence, plaintiff claimed that he sustained injuries due to the inadequacy of both the seatbelt system in the vehicle and the driver's seat and therefore contended that the design and manufacture of the vehicle was defective. In an effort to evaluate plaintiff's contentions, Ford thereafter arranged to inspect the vehicle on May 10, 1984. The inspection revealed that *only* the chassis was a Ford product; the body of the vehicle, including the seatbelt system and driver's seat, were not designed, manufactured or assembled by Ford.

Since it had no responsibility whatsoever for the vehicle components which plaintiff claimed were defective, Ford prepared and filed a motion for summary judgment and summary adjudication of issues. That motion was filed on July 9, 1984, and described the basis for Ford's lack of any conceivable liability. The motion was fully supported by an affidavit from a Ford engineer who had examined the vehicle. A hearing to consider the motion was not scheduled until August 20, 1984.

During the period before the motion was heard and although Ford's motion explained that it had no liability, plaintiff failed to seek to amend his complaint or to stay the motion. In his opposition to the motion, plaintiff merely indicated that he would like to conduct discovery to determine who was responsible for the allegedly defective seat and restraint system. That contention, of course, was no basis for denying the motion. On August 20, the lower court heard and granted Ford's motion for summary judgment and summary adjudication of issues. Plaintiff never sought to join any other defendant until after final judgment was entered by the lower court on August 27, 1984.

Plaintiff does not now seek to challenge the judgment entered for Ford. Instead, the basis of the pending motion is revealed by plaintiff as follows:

"It was understood by counsel for the plaintiff at the hearing of this motion of August 20, 1984, that summary judgment was granted as to Ford Motor Company *only*, and that plaintiff would be allowed to name additional defendants in that matter"

Motion, p. 3 (Emphasis added.)

This empty assertion has seemingly triggered a series of actions by plaintiff in the lower court after entry of judgment.

Due to the erroneous belief that the lower court still had jurisdiction and on August 29, 1984, for example, plaintiff filed a motion for leave to join additional defendants or, in the alternative, for a remand of the action to state court. Plaintiff essentially claimed that he had final-

ly determined the identity of at least three additional defendants and that the matter should be remanded. Although plaintiff did not choose to serve his motion on Ford, the lower court properly ruled, on September 28, 1984, that because it lacked jurisdiction over the matter, no action would be taken to consider the motion except pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. In the meantime, plaintiff had filed a notice of appeal to this Court on September 26, 1984.

Despite the appeal and apparently believing that the lower court had offered a solution to his dilemma, plaintiff continued in his struggle to excuse his lack of diligence and undo the judgment. On October 4, 1984, plaintiff filed a motion for relief under Rule 60(b) or, in the alternative, to reconsider the granting of the summary judgment under the local rules of the Central District. Once again, plaintiff declined to serve Ford. Once again, similar to the prior motions and without challenging the summary judgment entered for Ford, plaintiff requested an opportunity to name additional defendants. Once again, counsel representing plaintiff attempted to excuse his lack of diligence by arguing that he "understood" that the judgment was somehow limited to allow him an opportunity to name new defendants.

After again considering the same arguments and on November 20, 1984, the lower court denied plaintiff's motion. In its memorandum opinion of November 21, the lower court expressly pointed out that plaintiff's persistent argument that judgment was entered "only" as to Ford failed to appreciate that, under federal practice, there was nothing left of the action. The lower court also

noted that plaintiff admittedly knew the identity of at least one potential defendant more than one month prior to the summary judgment hearing. There was simply no justification to set aside the judgment.

Instead of pursuing this appeal, plaintiff next scheduled a status conference with the lower court on December 20, 1984. While the purpose of that conference is unclear, it appears that plaintiff finally concluded that the notice of appeal divested the lower court of jurisdiction. As a consequence, plaintiff sought the agreement of the lower court to somehow reconsider its denial of the previously filed motion to set aside the judgment under Rule 60(b) if this Court would permit the necessary jurisdiction.

Plaintiff thus seeks a "limited remand" from this Court which will somehow permit:

"[t]he district court to reconsider plaintiff's motions previously filed, allowing the plaintiff to pursue claims against other possible tortfeasors so that he may be compensated for his severe and permanent disabling injuries."

(Motion, p. 11.)

It therefore appears that plaintiff now wants the assistance of this Court to do what was previously determined to be impermissible by the lower court. How plaintiff expects to now excuse himself for failing to name the proper defendants through this procedure remains a mystery. Beyond being entirely unsupported by any facts, the contentions raised by plaintiff are not endorsed by the authorities.

III. *Pertinent Authorities Do Not Require a "Limited Remand"*

Plaintiff's motions seem to suggest that a limited remand will somehow automatically allow him to amend his complaint to join additional defendants and then somehow allow the action to be remanded to state court. Such a contention is no less than astonishing and it is most certainly not supported by the authorities. The lower court has already considered plaintiff's arguments under Rule 60(b) and found them unpersuasive.

As a preliminary matter, the Ninth Circuit has generally held that the filing of a notice of appeal divests the trial court of jurisdiction to consider a motion under Rule 60(b) without a remand from the appellate court. *See Palomo v. Baba*, 497 F.2d 959 (9th Cir. 1974); *Canadian Ingersoll-Rand Co. v. Peterson Products*, 350 F.2d 18 (9th Cir. 1965). In addition, a moving party is ordinarily expected to ask the lower court to first indicate whether it wishes to entertain the motion or to grant it and then to move the appellate court for a remand. *See Long v. Bureau of Economic Analysis*, 646 F.2d 1310 (9th Cir. 1981) vacated on other grounds, 454 U.S. 934 (1981). However, in this instance, the lower court has already fully considered and expressly denied plaintiff's motion under Rule 60(b)(6).

The plain fact is that leave of this Court is not required to have the lower court reconsider a motion under Rule 60(b). *See Corex Corp. v. United States*, 638 F.2d 119 (9th Cir. 1981), which involved a suit for the refund of excise taxes. The lower court entered judgment for

the government and, thereafter, the taxpayer filed a motion for relief from the judgment under Rule 60(b)(6).

“The district court mistakenly believed that leave from this Court was required before it could rule upon taxpayer’s motion. The taxpayer petitioned this Court on behalf of the district court for permission to hear the taxpayer’s motion. [Thereafter] this Court denied the request, stating that there was nothing before the Court and that permission from this Court to hear such a motion was not necessary.”

638 F.2d at 121.

See also Standard Oil Co. of California v. United States, 429 U.S. 17, 18 (1976) (“We hold that the District Court may entertain a Rule 60(b) motion without leave by this Court In our view, the arguments in favor of requiring appellate leave are unpersuasive.”).

Plaintiff has cited *Smith v. Lujan*, 588 F.2d 1304 (9th Cir. 1979), and *Crateo, Inc. v. Intermark, Inc.*, 536 F.2d 862 (9th Cir. 1976), for the proposition that the “proper procedure” is to first seek an order from this Court to allow the lower court to reconsider the previously decided motion. While we find it curious that plaintiff now suddenly seeks to follow the correct procedure, his citation to these authorities is unanalyzed.

Smith v. Lujan, *supra*, involved an action by a lessee against the lessor’s heirs for the reexecution of a lost lease. The lower court ordered reexecution of the leases and the lessor appealed. After filing the notice of appeal, a Rule 60(b)(5) motion was made in the lower court where it was “entertained and denied.” Appellants then sought to appeal that denial. While the appellate court observed

that appellants should have first asked the lower court if it wished to entertain the motion and then to seek a remand, it also held as follows:

“We are aware of the district court’s intent to deny relief as requested in the Rule 60(b) motion, and in the interest of judicial economy, we are inclined in this case, to treat the notice of appeal from the Rule 60(b) order as a motion for remand. In that framework, we will consider the arguments made in appellants’ motion.”

588 F.2d at 1307.

The Court then considered and denied the motion.

Crateo, Inc. v. Intermark, Inc., 536 F.2d 862 (9th Cir. 1976), addressed a similar situation where an appellant “appealed” from a lower court’s order that it was inappropriate for it to either grant or entertain a Rule 60(b) motion. The appeal was ultimately considered as a motion for remand of the case for consideration under Rule 60(b). The appellate court then declined to order a remand. It is indeed perplexing to understand how these cases assist plaintiff.

Beyond attempting to invoke a cumbersome and inappropriate procedure, we moreover note that plaintiff has not and cannot meet his burden to establish that the judgment should be set aside under Rule 60(b)(6) which allows a party to be relieved from a judgment for “any other reason justifying relief from the operation of the judgment.” A moving party’s burden under Rule 60(b)(6) is difficult. See, e.g., *Corex Corp. v. United States*, 638 F.2d 119 (9th Cir. 1981).

“[Moving party] argues that clause (6) should be applied liberally, but the authorities indicate other-

wise. Together, *Klapprott and Ackermann v. United States*, 340 U.S. 193, 71 S.Ct. 209, 95 L.Ed. 207 (1950), hold that clause (6) is reserved for 'extraordinary circumstances.' *Id.* at 199, 71 S.Ct. at 212. This circuit has followed this view. See *Martella v. Marine Cooks and Steward Union, Seafarer's Int. Union*, 448 F.2d 729, 730 (9th Cir. 1971)."

638 F.2d at 141.

Any motion under a Rule 60(b)(6) must be considered by a very narrow standard and such a motion cannot be used as a substitute for appeal. See *Roque v. City of Redlands*, 25 F.R.Serv.2d 1519 (D.C. Calif. 1978) ("[T]he plaintiff has not met his burden of demonstrating the necessary 'exceptional and compelling circumstances' which will justify relief under Rule 60(b)(6). Rather, the plaintiff's proper remedy would lie by way of appeal.").

We would finally observe that there is no merit to plaintiff's suggestion that his belated identification of an additional party would allow the action to be remanded to state court. Under similar circumstances, this Court has not permitted such a maneuver. See *Lopez v. General Motors Corp.*, 697 F.2d 1328 (9th Cir. 1983).

"Counsel here says that he did try to identify the dealer who sold the truck, but he never told that to the court, or mentioned the unidentified dealer in his complaint or otherwise until more than six months after the action was removed and just four days before the motion for summary judgment was to be heard. A fortiori, this, too, was too late."

697 F.2d at 1332.

See also *Grigg v. Southern Pacific Co.*, 246 F.2d 613, 620 (9th Cir. 1957) ("[Counsel] never attempted to identify or

charge a Doe until he found he was in trouble—his case was going to a court where he preferred not to go. This was too late.”).

IV. *Ford is Entitled to the Amount of the Reasonable Expenses Incurred Due to the Filing of the Pending Motion*

The sequence of events precipitating the pending motion demonstrates a chronic inability to appreciate or even consider the rules of federal practice. These proceedings are and continue to be costly to Ford. We therefore respectfully request the imposition of sanctions.

While the rules of this Court are silent as to available remedies for such sanctionable conduct here, Rule 11 of the Federal Rules of Civil Procedure provides guidance.

“The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief *formed after reasonable inquiry it is well grounded in fact and is warranted by existing law . . .* and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”

(Emphasis added.)

Rule 11 also provides a remedy for violation of this provision.

“If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable

expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

Ford submits that this dispute is palpably unnecessary and that it should be awarded the costs incurred in opposing the motions.

V. Conclusion

There is no reason to grant plaintiff's motions under the procedures of this Court. Plaintiff is merely seeking unnecessary and inappropriate permission to have the lower court reconsider that which it has already decided. There is simply no basis for the pending motions. Ford requests that this Court deny the motions in their entirety and award its costs incurred in opposing these motions.

Dated: January 18, 1985.

Respectfully submitted,

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA

/s/ Richard A. Goette
Richard A. Goette

Attorneys for Defendant and
Appellee Ford Motor Company

DECLARATION OF RICHARD A. GOETTE

I, RICHARD A. GOETTE, hereby declare as follows:

1. I am an attorney at law admitted to practice before this Court and am a member of McCutchen, Black,

Verleger & Shea, counsel for Ford Motor Company in this action. I make this declaration in opposition to the motions of plaintiff for a limited remand and to vacate. I have personal knowledge of all the facts contained herein and could testify to them if called as a witness in this action.

2. This is a personal injury action in which plaintiff contends that on March 1, 1983, while in the course and scope of his employment with United Parcel Service, Inc. and while driving a 1968 truck owned by his employer, he was involved in a single vehicle accident.

3. On January 27, 1984, plaintiff filed an action for damages in the Superior Court of the State of California for the County of Los Angeles. That action named as defendants only Ford Motor Company and Does 1 through 50.

4. The summons and complaint were first received by Ford through its authorized representative on March 1, 1984. Since the action was between citizens of different states, since the amount in controversy exceeded the sum of \$10,000 and since there was no attempt to identify the Doe defendants, Ford petitioned for removal on March 29, 1984.

5. While the complaint did not explain the basis for plaintiff's negligence, warranty and strict liability claims, Ford ultimately determined through discovery that plaintiff allegedly sustained personal injuries due to a defective driver's seat and restraint system in the vehicle.

6. On May 10, 1984, Ford arranged for an engineering inspection of the subject vehicle. That inspection confirmed that Ford built *only* the chassis of the vehicle in

question. It was not connected in any way with the body of the vehicle, including the restraint system or the driver's seat which were implicated in this action and allegedly caused the injuries sustained by plaintiff.

7. On July 9, 1984, Ford filed a motion for summary judgment and for summary adjudication of issues. That motion was fully supported by an engineer from Ford who had inspected the subject vehicle. A hearing in connection with Ford's motion was not scheduled until August 20, 1984.

8. At no time prior to the hearing on August 20 did plaintiff seek to amend his complaint to add additional defendants who he contended were responsible, in whole or in part, for his alleged injuries, or to stay the motion.

9. On August 20, 1984, the lower court heard and granted the motion for summary judgment and summary adjudication of issues. Final judgment was entered on August 27, 1984.

10. At no time prior to entry of judgment did plaintiff seek to join any additional defendants who he contended were responsible, in whole or in part, for his alleged injuries.

11. On August 29, 1984, plaintiff filed a motion in the lower court for leave to join additional defendants or, in the alternative, for a remand of the action to state court. Although Ford was not served with that motion, plaintiff essentially claimed that he had finally determined the identity of at least three additional defendants and that the matter should be somehow remanded.

12. On September 28, 1984, the lower court ruled on plaintiff's motion to remand the action to state court and held that it had no jurisdiction over the action, except pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, and that no action would be taken on the motion.

13. On September 26, 1984, plaintiff filed a notice of appeal to this Court.

14. On October 4, 1984, plaintiff filed a motion for relief under Rule 60(b)(6) or, in the alternative, to reconsider the granting of the summary judgment under the local rules of the Central District. Similar to the previous motion, plaintiff declined to serve Ford.

15. On November 21, 1984, the lower court denied plaintiff's motion. In its memorandum opinion, the lower court pointed out that plaintiff's argument that judgment was entered "only" as to Ford failed to appreciate that, under federal practice, there was nothing left of the action.

16. At the request of plaintiff and on December 20, 1984, the lower court agreed to convene a status conference. The lower court then explained that if the appellate court granted a partial remand of the matter, it would simply enter its previous ruling in connection with plaintiff's motion to reconsider. The lower court also expressed the belief that there was no reason to "reentertain" the motion.

17. The cost of opposing the pending motion has amounted to in excess of \$750.00.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of January, 1985, at Los Angeles, California.

/s/ Richard A. Goette
Richard A. Goette

(Proof of Service omitted in printing)

No. 84-6389

In The
UNITED STATES COURT OF APPEALS
For The Ninth Circuit

(Caption omitted in printing)

APPEAL FROM ORDER
GRANTING SUMMARY JUDGMENT

SUPPLEMENTAL DECLARATION OF RICHARD A.
GOETTE IN OPPOSITION TO MOTION FOR
LIMITED REMAND AND MOTION TO VACATE

(Received January 25, 1985)

HOWARD J. PRIVETT
RICHARD A. GOETTE
McCUTCHEN, BLACK,
VERLEGER & SHEA
600 Wilshire Boulevard
Los Angeles, California 90017

Attorneys for Appellee
Ford Motor Company

DECLARATION OF RICHARD A. GOETTE

I, RICHARD A. GOETTE, hereby declare as follows:

1. I am an attorney at law admitted to practice before this Court and am a member of McCutchen, Black, Verleger & Shea, counsel for Ford Motor Company in this action. I make this declaration in opposition to the motions of appellant for a limited remand and to vacate. I have personal knowledge of all the facts recited herein.

and could testify to them if called as a witness in this action.

2. For this Court's reference and convenience, attached is a copy of the reporter's transcript of proceedings obtained in connection with the status conference on December 20, 1984.

3. I attended that status conference and believe that the attached transcript accurately sets forth the statements made by the lower court and counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of January 1985, at Los Angeles, California.

/s/ Richard A. Goette
Richard A. Goette

[Attachment: Reporter's Transcript of Proceedings
on December 20, 1984, see at pp. 176-186.]

GREENE, O'REILLY, BROILLET, PAUL, SIMON,
McMILLAN, WHEELER & ROSENBERG

Lawyers

Los Angeles Office

816 South Figueroa Street

Los Angeles, California 90017-2516

(213) 482-1122

(213) 482-1350

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Caption omitted in printing)

CASE NO. C 84 2049 PAR (mex)

NOTICE OF REMAND; DECLARATION OF
TIMOTHY J. WHEELER

Pursuant to the Order filed by the United States Court of Appeals for the Ninth Circuit, on January 22, 1985, and attached hereto as Exhibit "1", plaintiff hereby requests that this Court not only reconsider plaintiff's Motion for Reconsideration previously filed, but also the Supplemental Declaration of Timothy J. Wheeler, previously filed on January 11, 1985, and attached hereto as Exhibit "2".

DATED: January 28, 1985

Respectfully submitted,
GREENE, O'REILLY, BROILLET,
PAUL, SIMON, McMILLAN,
WHEELER & ROSENBERG

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

EXHIBIT "1"

[U.S. Court of Appeals Order filed January 22, 1985,
see at p. 212.]

EXHIBIT "2"

[Supplemental Declaration of Timothy J. Wheeler,
filed January 11, 1985, see at pp. 201-211.]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 84-2049 PAR

Date 2/8/85

Title Gary Bryant -v- Ford Motor Co.

DOCKET ENTRY

PRESENT:

HON. PAMELA ANN RYMER, JUDGE

Linda Orona

No Appearance

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Not Present

ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

PROCEEDINGS:

The Court has carefully considered plaintiff's motion to reconsider. Waiving oral argument pursuant to Local Rule 7.11, the Court now Finds that plaintiff's motion should be *DENIED*.

cc: counsel of record.

Initials of Deputy Clerk LO

GREENE, O'REILLY, BROILLET, PAUL, SIMON,
McMILLAN, WHEELER & ROSENBERG

Lawyers

Los Angeles Office

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Los Angeles, California 90017-2516

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(213) 482-1350

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. C 84 2049 PAR (mcx)

NOTICE OF APPEAL

(Caption omitted in printing)

TO THE CLERK OF THE ABOVE-ENTITLED
COURT:

NOTICE IS HEREBY GIVEN that plaintiff, GARY BRYANT, hereby appeals to the Federal Court of Appeal for the Ninth Circuit from this Court's Order denying plaintiff's Motion for Reconsideration and Motions for Remand, Joinder and Amendment of His Complaint, entered herein on February 8, 1985, against the plaintiff, GARY BRYANT, providing as follows:

See Exhibit "A" attached hereto.

Notice shall be given to FORD MOTOR COMPANY, by and through its attorneys of record, McCutchen, Black, Verleger & Shea, 600 Wilshire Blvd., Los Angeles, California, Attention: Richard Goette, Esq.

DATED: February 15, 1985

GREENE, O'REILLY, BROILLET,
PAUL, SIMON, McMILLAN,
WHEELER & ROSENBERG

By /s/ Timothy J. Wheeler
TIMOTHY J. WHEELER
Attorneys for Plaintiff,
GARY BRYANT

EXHIBIT "A"

[United States District Court filed February 8, 1985;
see at p. 235.]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Caption omitted in printing)

Nos. 84-6389
85-5698

DC # CV-84-2049 PAR
Central California

ORDER

(Filed May 3, 1985)

On April 23, 1985, a Prebriefing Conference was held before Conference Attorney Joshua R. Steinhauer. Appellant was represented by Michael Goldberg and George Rosenberg. Appellees were represented by Richard Goette.

- (1) These appeals are consolidated.
- (2) Appellant shall file a brief of not more than 25 pages on or before June 3, 1985.
- (3) Appellees shall file a brief of not more than 25 pages on or before July 8, 1985.
- (4) Appellant may file a reply brief of not more than 10 pages within 21 days of the service date of appellees' brief.

This order is subject to reconsideration by a judge if any objection is filed within 10 days of the entry of the order.

FOR THE COURT,
/s/ Joshua R. Steinhauer
Joshua R. Steinhauer
Conference Attorney

4.30/10

Gary BRYANT, Plaintiff-Appellant,

v.

FORD MOTOR CO.,
Defendant-Appellee.

Nos. 84-6389, 85-5698.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Nov. 5, 1985.

Decided July 11, 1986.

As Amended July 18 and Aug. 4, 1986.

Consumer brought state court personal injury action against automobile manufacturer and 50 Doe defendants, alleging negligence, breach of warranty and strict liability. Automobile manufacturer removed action to federal court. The United States District Court for the Central District of California, Pamela Ann Rymer, District Judge, entered summary judgment for automobile manufacturer, and defendant appealed. The Court of Appeals, Cynthia Holcomb Hall, Circuit Judge, held that removal of action which named real but unidentified people or entities as Doe defendants was premature.

Vacated and remanded with directions.

Wallace, Circuit Judge, filed concurring opinion.

Michael L. Goldberg, Washington, D.C., for plaintiff-appellant.

Richard A. Goette, McCutchen, Black, Verleger & Shea, Los Angeles, Cal., for defendant-appellee.

Appeal from the United States District Court Central District of California.

Before WALLACE, HUG, and HALL, Circuit Judges.

CYNTHIA HOLCOMB HALL, Circuit Judge:

Plaintiff-appellant Gary Bryant appeals from the decision of the district court granting summary judgment in favor of defendant-appellee Ford Motor Company. We conclude that the district court lacked jurisdiction over this action because of the presence of potentially non-diverse Doe defendants at the time of removal from state court.

I

Bryant originated this action for negligence, breach of warranty, and strict liability in California state court against Ford and Does 1 through 50. Ford removed the action to the United States District Court for the Central District of California.

Bryant seeks recovery for injuries he sustained in an accident while driving a Ford van for United Parcel Service on March 1, 1983. Bryant contends that the passive restraint system in the van was defective because it did not include a shoulder harness. Bryant's complaint alleges that Does 1 through 50 are related to each other and to Ford as "agents, servants, employees and/or joint venturers." Bryant claims that Ford and each of the Does

were involved in the design, production, inspection, and distribution of the van which Bryant was driving at the time of the accident.

A joint inspection of the van by the parties on May 10, 1984, revealed that Ford had produced only the chassis of the van. The body and other components, including the passive restraint system, were produced by other companies as part of the joint venture. The companies responsible for producing the component parts could not be identified at the time of removal or the time of inspection because the van was produced in 1968 and Ford destroys records of this type after ten years. Bryant subsequently identified City Ford Company as the seller of the van, General Seating and Sash Company (General Seating) as the producer of the seats, and Grumman-Olson Company as the producer of the body. City Ford and Grumman-Olson are California corporations.

The district court granted Ford's motion for summary judgment, concluding that there were no material facts as to Ford's liability because of the inspection evidence that Ford was not involved in the production of the passive restraint system. Bryant then moved the court to add City Ford, General Seating, and Grumman-Olson to the cause of action. The district court refused Bryant's motion, finding that the presence of non-diverse parties was not new evidence justifying relief from judgment under Rule 60(b). Bryant appealed the grant of summary judgment. We granted a limited remand at Bryant's request for the district court to gain reconsider its previous rulings. The district court again refused to join the additional parties, and this appeal of the district court's rulings followed.

II

The presence of unidentified Doe defendants at the time of removal creates difficulties for federal courts in determining whether diversity jurisdiction is present, and hence whether removal is proper. Despite state law rules of procedure which permit the filing of actions against Doe defendants without any evidence of the Doe's identity, *see, e.g.*, Cal. Code Civ.Proc. § 474, the district court must determine the identity and citizenship of Doe defendants in order to evaluate diversity of citizenship. *See, e.g., Hartwell Corp. v. Boeing Co.*, 678 F.2d 842, 842-43 & n. 1 (9th Cir.1982); *Chism v. National Heritage Life Insurance Co.*, 637 F.2d 1328, 1330 (9th Cir.1981). Ordinarily the presence of Doe defendants defeats diversity jurisdiction. *Othman v. Globe Indemnity Co.*, 759 F.2d 1458, 1462 (9th Cir.1985). We have recognized exceptions to this rule when the Does are wholly fictitious, *see, e.g., Grigg v. Southern Pacific Co.*, 246 F.2d 613, 619 (9th Cir.1957), or when the charges against the Does are so general that no clue is given as to their identity or their relationship to the cause of action, *see, e.g., Hartwell*, 678 F.2d at 842-43; *Chism*, 637 F.2d at 1330.¹ The rationale

1. In *Othman*, 759 F.2d at 1462 n. 7, we noted some confusion in our previous decisions regarding whether the district court should examine the specificity with which the Does have been pleaded in determining whether removal is appropriate or whether the presence of Does always defeats diversity jurisdiction, and hence removal. A close examination indicates that our previous decisions are reconcilable. In dicta in *Preaseau v. Prudential Ins. Co.*, 591 F.2d 74, 77 n. 2 (9th Cir. 1979), we questioned whether the specificity of Doe pleadings ever should be examined, but actually held that specificity would not be considered in determining whether defendant's

for both of these exceptions is a balance between the limited jurisdiction of federal courts and the need to prohibit plaintiffs who initiate actions in state court from defeating removal jurisdiction by the use of pleading fictions.

The exception for wholly fictitious Does simply recognizes that diversity jurisdiction, and hence the availability of removal, cannot possibly be affected by Does which are included in the state court complaint as a matter of course even though no other possible parties to the action exist. As we stated in *Grigg*, "Does [who] live not and are accused of nothing, should not divert the course of justice." 246 F.2d at 620. When the Does in state court pleadings are wholly fictitious, the federal district court can judge diversity on the basis of the citizenship of the named parties to the action without fear that its determination will be affected by the later discovery of non-diverse parties.

The exception for Doe pleadings which give no clue as to the identity of the Does or their relationship to the cause of action is essentially a practical application

(Continued from previous page)

petition for removal after Does had been dismissed from the action was timely, id. at 76-79 & n. 2. Our holding in *Preaseau* prohibits plaintiffs from using Doe pleadings to trap defendants into untimely petitions for removal. *Preaseau* does not address the situation in which a defendant comes forward within the initial thirty days permitted by 28 U.S.C. § 1446(b) and claims that removal is appropriate because the Does are fictitious. *Id.* at 77 n. 2. When a defendant comes forward with such allegations we have consistently examined the specificity of the Doe pleadings to determine diversity and the availability of removal. See *Hartwell*, 678 F.2d at 842-43 & n. 1; *Chism*, 637 F.2d at 1330; *Grigg*, 246 F.2d at 620; *Southern Pacific Co. v. Haight*, 126 F.2d 900, 904 (9th Cir.), cert. denied, 317 U.S. 676, 63 S.Ct. 154, 87 L.Ed. 242 (1942).

of the exception for wholly fictitious Does. In some instances the Doe pleadings are so general that the district court may conclude that the Does do not exist or do not have any relationship to the action even though the parties have not conceded that the Does are fictitious. For example, if the Does are mentioned in the caption to the case or listed as parties but no indication is given regarding their identity or how their activities give rise to a cause of action, the district court may conclude that the Does will never be parties to the action and evaluate removal jurisdiction accordingly. *See, e.g., Hartwell*, 678 F.2d at 842 (Does mentioned in caption and described generally as participating in the alleged wrongdoing without any description of their role); *Chism*, 637 F.2d at 1330 (Does not included in any charging allegations); *Asher v. Pacific Power & Light Co.*, 249 F.Supp. 671, 675-77 (N.D. Cal. 1965) (Does not included in charging allegations, and nature of nuisance cause of action indicated that only appropriate defendant was the company, not Does). We emphasize that this is a very limited exception to the general rule that Does defeat diversity jurisdiction, and we will treat it as such. If the pleadings provide *any* information regarding the identity of the Does and their relationship to the action, the district court should remand the case to the state court. *See, e.g., Pullman Co. v. Jenkins*, 305 U.S. 534, 540, 59 S.Ct. 347, 350, 83 L.Ed. 334 (1939) (Doe identified as allegedly negligent porter but citizenship unknown); *Preaseau*, 591 F.2d at 77 n. 2 (Does identified as agents or employees of other defendants)

(dieta).² Once the existence of the Does, their citizenship, and their relationship to the cause of action is defined sufficiently, removal may be sought if the new information establishes that all parties are diverse. *Cf. Preaseau*, 591 F.2d at 76-79 (petition for removal filed immediately after Doe defendants were dismissed from action is timely).

In this case removal was premature because Does 1 through 50 did not fall within the above exceptions. Bryant's complaint identified the Does as agents, employees or joint venturers of Ford. The charging allegations accuse the Does of participating in the allegedly negligent production of the van and its component parts. Both parties recognized that there was a strong possibility that other companies were involved in the production of the van, although the companies could not be identified at the time of removal because records of the joint venture had been destroyed. Because the Does were real but unidentified people or entities the district court could not determine whether the Does would defeat diversity jurisdiction once they were identified, and, therefore, should have remanded the case to the state court. That City Ford and Grumman-Olson turned out to be California corporations which are not diverse as to Bryant demonstrates

2. In order to proceed with maximum caution, it will usually be advisable for the district court to issue an order to show cause why the case should not be remanded to the state court when the state court complaint contains Doe allegations and removal is sought on the basis of diversity. If the party seeking removal claims that the Does are fictitious in its petition for removal or in response to an order to show cause, the district court may also wish to require a response in writing or by hearing from the state court plaintiff who filed the Doe allegations.

the reason for denying removal when allegations against real but unidentified Does are present.³

III

The decision of the district court is VACATED. We REMAND to the district court with instructions to remand to the appropriate state court, each party to bear its own costs for this appeal.

WALLACE, Circuit Judge, concurring:

I concur in the majority opinion except for footnote 2, in which the majority advises the district courts how best to respond to Doe pleadings in petitions for removal. Our responsibility, as I understand it, is confined to interpreting and applying the law to the issues presented to us. We do not possess a general power that authorizes us to advise the district courts which course of action they should select from among the many possible alternatives that fall within legal constraints. Such advice, in my judgment, should be given at judicial seminars and conferences. Although the advice of one or two judges is important, I believe it should not be part of a decision speaking for the entire court.

3. Because we find that removal was improper we do not reach the question of whether the proposed amendment of pleadings to identify City Ford, Grumman-Olson, and General Seating as the Doe defendants relates back to the filing of Bryant's original state court complaint. See *Lindley v. General Electric Co.*, 780 F.2d 797 (9th Cir.1986).

